A LEGISLATIVE HEARING ON S. 3571—GOOD SAMARITAN REMEDIATION OF ABANDONED HARDROCK MINES ACT OF 2022

JOINT HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
WITH THE
SUBCOMMITTEE ON CHEMICAL SAFETY, WASTE MANAGEMENT, ENVIRONMENTAL JUSTICE, AND REGULATORY OVERSIGHT
AND THE
SUBCOMMITTEE ON FISHERIES, WATER, AND WILDLIFE

UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS
SECOND SESSION
SEPTEMBER 29, 2022

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A LEGISLATIVE HEARING ON S. 3571—GOOD SAMARITAN REMEDIATION OF ABANDONED HARDROCK MINES ACT OF 2022

THURSDAY, SEPTEMBER 29, 2022

U.S. Senate,
Committee on Environment and Public Works,
Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight,
Joint with the Subcommittee on Fisheries, Water, and Wildlife,
Washington, DC.

The Committee, met, pursuant to notice, at 10:01 a.m. in room 406, Dirksen Senate Office Building, Hon. Jeff Merkley (Chairman of the Subcommittee) presiding.
Present: Senators Merkley, Capito, Whitehouse, Kelly, Lummis, Sullivan, and Ernst.

OPENING STATEMENT OF HON. JEFF MERKLEY,
U.S. SENATOR FROM THE STATE OF OREGON


We are here to receive testimony from several witnesses about Senate Bill 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. The history of the West is a history of mining, mining for gold, for silver, for copper, and for nickel and more.

In my State of Oregon, mining of these minerals gave birth to whole towns after the first nuggets or veins were discovered in the 1850s and prospectors and fortune seekers from California and other far reaches of the world came searching for these metals. In the century between the 1860s and 1960s, Oregon mines produced somewhere in the range of $130 million to $150 million, which in the currency of the time was a lot. But over time, most of these mines dried up or ran out, and when they did, they were abandoned, and the towns that they created died.

But the mines that gave birth to them live on, leeching various chemicals into the watersheds and nearby streams, impacting many, many different tributaries and many different tribal and environmental justice communities. And there is no one taking responsibility to clear them up.
There are some estimated 140,000 abandoned hardrock mining features throughout the United States. Federal agencies have found that six in ten are known to pose dangers to physical safety or are environmentally hazardous. This means thousands of miles of streams are impaired by heavy metals or acidity from these abandoned mines.

The Environmental Protection Agency also estimates that abandoned hardrock mines are impairing water quality in 40 percent of the headwater streams over the western United States, 52 percent of which are also drinking water sources.

There is a critical need for us to address these abandoned mines, to clean them up, to stop them from polluting our waters, and in some cases, reutilizing the very areas they are in in some way to benefit communities, such as utilizing them for fields of solar panels. The question is, how do we do that when those who were responsible for the mines initially are long gone?

The task is so daunting that the Bureau of Land Management estimates it could take up to 500 years just to confirm the presence of physical or environmental hazards at the abandoned mines they already know of. And that is why last year we sought and authorized $3 billion in investments for cleaning up and reclaiming abandoned mine lands as part of the Bipartisan Infrastructure Law. But more clearly needs to be done, and we need to work with those Good Samaritans, State agencies, businesses, non-profits, environmental groups, and others willing to take on this task.

As things stand now, however, it is not easy to do so. Any group that works on a particular mine takes on potential liability for the preexisting pollution. That is a challenge, a challenge that this hearing will seek to address.

The Good Samaritan legislation we are looking at, and the pilot program it creates, will seek to limit that liability for projects with low environmental risk which will improve water and soil quality and otherwise protect human health. So this hearing is an opportunity to explore, to understand the merits of this strategy, to understand better how it will correct a multi-generational environmental hazard, and to consider suggestions for improving the legislation, and to ensure there is appropriate oversight and input from States, Tribes, and other stakeholders.

I want to thank all of our witnesses for being here as well as the interest and engagement of both Subcommittees. And with that, I am going to turn things over to Senator Lummis, Ranking Member of the second Subcommittee, for any opening remarks she would like to share.

OPENING STATEMENT OF HON. CYNTHIA M. LUMMIS, U.S. SENATOR FROM THE STATE OF WYOMING

Senator Lummis. Thank you, Chairman Merkley. It is great to be here with you and join with your Committee, the CSWMEJRO Committee. That is quite an alphabet soup.
[Laughter.]

Senator Lummis. It is lovely to be with Senator Heinrich, who is one of the sponsors of this legislation, as well as Jim Ogsbury, from the Western Governors' Association.

It is nice to see you again.
This legislation and hearing are the culmination of efforts by a lot of members and outside support groups, including some of those represented here today by our witnesses.

Again, Senator Heinrich, it is great to see you here today.

Senator Risch is also cosponsoring this important bipartisan legislation. It is a pragmatic solution to the challenge of approximately 550,000 abandoned mines across the U.S., costing an estimated $54 billion to remediate. And it is just amazing how long this has been going on. It is time to get after some of these.

While most of the sites don’t pose environmental problems, drainage and runoff from some of these may pose a threat to surface or groundwater. So this bill creates a 7 year pilot permitting program to allow for 15 Good Samaritan remediation projects on Federal, State, tribal, and private lands.

By resolving the liability issues that Senator Merkley mentioned that come under CERCLA and the Clean Water Act, we can expect additional help from new partners that will both protect human health and improve water and soil quality. We want to make sure that “no good deed goes unpunished” doesn’t apply here. Legislation like CERCLA and the Clean Water Act that are intended to protect the environment shouldn’t be the very reason that we can’t protect the environment.

Mining has been happening in our Nation for around 150 years. But most of that occurred before serious environmental regulation was in place. And while we have to address some of that legacy mining that lacked the incredible safety and environmental standards we use today, we also must recognize that mining is absolutely necessary to our way of life. From materials used in life saving medical devices like CAT scans to defensive armor plates for our men and women serving in the military. Mining impacts every single one of us for good.

I look forward to hearing from our witnesses today how this bill helps solve some of these legacy remediation issues in a common sense way that also respects federalism and utilizes willing partners who are eager to help.

In closing, legislation to authorize Good Samaritan remediation has been around since 1999. That is a long time; we are going back into the last millennium. Something as bipartisan as this needs to be made a reality. I am hopeful that just perhaps the alphabet soup combination of our Subcommittees will be just the magic recipe to do so.

Thanks again, Mr. Chairman. I yield back.

Senator MERKLEY. Taking leadership on this long standing potential solution has been the lead sponsor, Senator Heinrich.

I know when you sponsor a bill, you also become an expert in it. So we are looking forward to your testimony. You will be followed by Senator Risch.

STATEMENT OF HON. MARTIN HEINRICH, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator HEINRICH. Chairman Merkley, Ranking Member Lum- mis, thank you for holding this hearing today on the Good Samaritan Remediation of Abandoned Hardrock Mines Act. I want to very
much thank Senator Risch for your partnership and leadership on this critical issue.

Across the country, old, abandoned hardrock mines leak heavy metals and other pollutants into waterways every day. We have certainly seen this with the Animas River and its travails in New Mexico. These mines, which produced metals like lead and gold, iron and silver, contributed vital materials to the industrial development of our Nation over the last century. In fact, both my father and grandfather worked in this industry.

But in some cases, the companies that operated these mines shut down, went bankrupt, or just disappeared, leaving behind mine sites that pollute our lands and waters. We should hold responsible parties accountable for pollution. In fact, any company that has a historical legal or financial relationship to a closed mine is required by law today to clean up that site. And that is appropriate.

But there are literally tens of thousands of abandoned hardrock mine sites that are truly abandoned. No person, no company that was involved in the operation or the ownership of the mine still exists and can be held accountable for that site. These mines are just there, year after year, in some cases polluting our water and destroying habitat for fish and wildlife.

One factor that keeps unrelated third parties from voluntarily cleaning up these sites is that under Federal law, liability for pollution cleanup attaches to any person or any entity that touches a pollution site for any purpose, even if that purpose is simply to clean it up. This means that organizations like Trout Unlimited, who you will hear from later this morning, are unwilling to tackle mine site cleanup even when it is a major cause of fish habitat decline. Because doing so could mean huge liability for pollution that they had no role in causing in the first place. Even State environmental departments often avoid cleaning up certain sites of abandoned mines because the liability risk is simply too great.

So we need a new approach. The Good Samaritan Remediation of Abandoned Hardrock Mines Act would create a pilot program to allow the EPA to issue no more than 15 Good Samaritan mine cleanup permits. These permits could only be issued to third parties unrelated to the mine, and the EPA would have the authority to approve or deny the applicant’s cleanup plan.

The permits would be subject to NEPA and other environmental laws, but would relieve the permit applicants from being legally liable for the pollution that they did not cause. This legislation has broad support, including State environment departments, Tribes, mining companies, hunting and fishing groups, conservation groups, local elected officials, and many more. We now have 18 bipartisan cosponsors, including several members of this Committee.

This broad support comes from the fact that our communities simply can’t wait any longer to start cleaning up this pollution. So I hope we can pass this legislation soon and let these Good Samaritans get to work cleaning up our lands and waters.

[The prepared statement of Senator Heinrich follows:]
Statement from Senator Martin Heinrich on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

September 29, 2022

Chairman Merkley, Ranking Member Lummis, thank you for holding this hearing today on the Good Samaritan Remediation of Abandoned Hardrock Mines Act.

And thank you Senator Risch for your partnership on this important issue.

Across the country, old, abandoned hardrock mines leak heavy metals and other pollutants into waterways every day. These mines, which produced metals like lead, gold, iron, and silver, contributed vital materials to the industrial development of our nation over the last century.

But, in too many cases, the companies that operated these mines shut down, went bankrupt, or just disappeared, leaving these mine sites to pollute our lands and waters for decades. We should hold responsible parties accountable for pollution they have caused. Any company that has a historical, legal, or financial relationship to a closed mine is required by federal law to clean up that site.

But there are tens of thousands of abandoned hardrock mine sites that are truly abandoned—no person or company that was involved in the operation or ownership of the mine still exists to be held accountable to clean it up. These mines just sit there, year after year, polluting our water and destroying habitat for fish and wildlife.

One factor that keeps unrelated third parties from voluntarily cleaning up these sites is that under federal law, liability for pollution cleanup attaches to any person or entity that touches a pollution site for any purpose—even just to clean it up. This means that organizations like Trout Unlimited, who you’ll hear from later this morning, are unwilling to tackle mine site cleanup even when it’s a major cause of fish habitat decline, because doing so could mean huge liability for pollution that they had no role in causing.

Even state environment departments often avoid cleaning up certain types of abandoned mine sites because the liability risk is too great. We need a new approach.

The Good Samaritan Remediation of Abandoned Hardrock Mines Act would create a pilot program to allow the EPA to issue no more than 15 Good Samaritan mine cleanup permits. These permits could only be issued to third parties unrelated to the mine and the EPA would have authority to approve or deny the applicants’ cleanup plan. The permits would be subject to NEPA and other environmental laws, but would relieve the permit applicants from being legally liable for the pollution that they did not cause.

This legislation has broad support, including state environment departments, tribes, mining companies, hunting and fishing groups, conservation groups, local elected officials, and many more. We have 18 bipartisan cosponsors, including several members of this committee. This
broad support comes from the fact that our communities can’t wait any longer to start cleaning up this pollution.

I hope we can pass this legislation soon and let these Good Samaritans get to work cleaning up our lands and waters.
Senator MERKLEY. Thank you very much, Senator. I know you have a lot of mines in New Mexico, as we do in Oregon, as we do in Wyoming, as we do in State after State in the West. That includes Idaho, and we are delighted to have Senator Risch joining us today.

STATEMENT OF HON. JAMES E. RISCH,
U.S. SENATOR FROM THE STATE OF IDAHO

Senator RISCH. Thank you very much. I appreciate the opportunity to talk about this important piece of legislation, and for you setting the hearing today.

In my home State, mining has a long and rich history. And that history is still being written today. Idaho, aptly named the Gem State, has produced world class supplies of gold and silver from before its statehood. It still does so today. And it has produced minerals critical for defense needs from World War II through today.

As we work to further advance security and clean energy capabilities and shore up supply chains, Idaho's supply of critical and strategic minerals will without a doubt play a central role. Today, mining companies are held to rigorous environmental and reclamation standards throughout the mining process and are able to safely and sustainably extract important mineral resources.

However, this was not always so. Many long abandoned mines, while once a major boon to communities across the West, now pose serious environmental risks, without having a party clearly responsible for them. I am honored to partner with Senator Heinrich sponsoring Senate Bill 3571, the Good Samaritan Remediation of Hardrock Mines Act, along with, as Senator Heinrich noted, an impressive and growing coalition of bipartisan sponsors.

This bill is a reflection of years of collaboration among interested parties or Good Samaritans with genuine will to clean up these abandoned mines.

My undergraduate studies were in natural resources. I have spent my entire adult life as a State Senator, Lieutenant Governor, Governor, and now here in the U.S. Senate, working to solve natural resource problems. I can tell you from experience, it is rare to have industry, conservation, and recreation groups rally around a singular, uniting issue the way they have with this legislation.

It is not unprecedented. In Idaho, when I was Governor, we undertook the invitation from President Bush at the time to write a Roadless Rule applicable to our State. As you know, the Roadless Rule issue has been a vexing problem and continues to be a vexing problem all over America, except in Idaho.

We wrote a Roadless Rule, when I say we, I mean Idahoans, in collaboration with the various stakeholders. We wrote a Roadless Rule that survived the test in the Ninth Circuit Court of Appeals, believe it or not, and is the law today applicable in Idaho.

I have to thank all of the parties that helped develop that Roadless Rule. The type of support I had there and on this bill is a testament to how important and timely this bill is.

We have good faith actors, and good faith actors are always a necessary ingredient when you are trying to do this. These good faith actors are ready and invested in remediating these legacy sites.
I would be remiss if I didn’t acknowledge my good friend, Chris Wood, who is here today. Chris heads Trout Unlimited, and was an incredibly valuable partner as we developed the Roadless Rule for Idaho, and then went through the courts sustaining it. Chris purports to be an environmentalist. But a little known fact is that he makes a pilgrimage every fall to one of our western States to try to help decimate our elk herds. Fortunately, he is a much better trout fisherman than he is elk hunter.

[Laughter.]

Senator Risch. We owe it to our western communities and to all Americans who hold dear our vast public lands to empower and encourage them to do what is allowed under this bill. I appreciate the step this Committee is taking to do this by discussing this legislation. I hope it will be the first step in its swift advancement, which as both of you have noted, is long, long overdue.

Again, I appreciate this opportunity to speak on this topic. I appreciate the partnership of Senator Heinrich. This is critical for communities across Idaho and across the West.

Thank you so much for your time.

[The prepared statement of Senator Risch follows:]
Senator James E. Risch Testimony
Environment and Public Works Committee Hearing on S.3571 – Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022
September 29, 2022

Thank you to the Chair and Ranking Member for inviting me to speak on this important issue.

Mining has a long and rich history in my home state of Idaho – a history that is still being written today. Idaho, the aptly named Gem State, has produced world-class supplies of silver and minerals critical for defense needs from World War II to the Cold War. As we work to further advance security and clean energy capabilities and shore up supply chains, Idaho’s supplies of critical and strategic minerals will play a central role.

Today, mining companies are held to rigorous environmental and reclamation standards throughout the mining process, and are able to safely and sustainably extract important mineral resources. However, this was not always so. Many long-abandoned mines, while once a major boon to communities across the West, now pose serious environmental risk without having a party clearly responsible for them.

I am honored to partner with Senator Heinrich to lead S. 3571, the Good Samaritan Remediation of Hardrock Mines Act, along with an impressive and growing coalition of bipartisan cosponsors. This bill is a reflection of years of collaboration among interested parties – or good Samaritans – with the genuine will to clean up these abandoned mines. I have spent decades working to solve natural resource problems in the U.S. Senate and the Idaho Senate, and it is rare to have industry, conservation, and recreation groups rally around a singular uniting issue the way they have with this legislation. This type of support is a testament to how important and timely this bill is. We have good faith actors who are ready and invested in remediating these legacy sites. We owe it to them and Western communities alike to empower and encourage these actions. I appreciate the step this Committee is taking to do so by discussing this legislation, and I hope it will be the first step in its swift advancement.

Again, I greatly appreciate the opportunity to speak on this topic, which is critical for communities across Idaho and the rest of the West.
Senator MERKLEY. Thank you very much, both Senators, and your presence, representing both northern and southern sections of the western United States, and representing both Blue and Red communities and States. It shows how much of a range of support there is for this effort. Thank you.

We will now ask the second panel to be seated.

Welcome to all the members of our second panel.

We are going to turn first to Senator Kelly of Arizona, who has been deeply engaged in this issue, and I know is fighting to find a solution that will help in his home State.

Senator Kelly.

STATEMENT OF HON. MARK KELLY,
U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KELLY. Thank you, Mr. Chairman, Ranking Member Lummis, and Chairman Carper, and Ranking Member Capito; thank you for holding this hearing today on the Good Samaritan Remediation of Abandoned Hardrock Mines Act.

Estimates from the Arizona State Mine Inspector indicate that Arizona could have as many as 100,000 abandoned hardrock mines. Not all of these pose a risk to public health and the environment. But there are hundreds that do, including many on tribal land.

Most of these sites predate any Federal or State mining regulation. In fact, most predate Arizona becoming a State.

There are real risks involved here. For example, abandoned uranium mines, including those on the Navajo Nation, pose an acute health risk to those living nearby. And throughout Arizona, abandoned zinc, copper, and lead mines pose a risk to surface water and groundwater quality.

At the same time, as we have this historic drought, these threats are threats to potential sources of drinking water, and they need to be taken seriously. Fortunately, the State of Arizona, particularly our Department of Environmental Quality, has risen to the challenge, which is why I am excited to welcome virtually the Director of the Arizona Department of Environmental Quality, Misael Cabrera, to join us today.

Director Cabrera has spent his entire professional career cleaning up and protecting the environment. He is an environmental engineer who, before this career in State government, worked on environmental quality projects as a contractor with EPA, DOD, and State and local governments.

For the past 11 years, he has worked at ADEQ first as the Deputy Director before he was appointed to serve as the agency’s director in 2015. Under his leadership, the ADEQ team has finished twice as many cleanups of hazardous waste sites than in the agency’s previous 27 year history.

He has doubled the number of leaking underground storage tank closures per year. And he has spearheaded efforts to clean up hardrock mine land sites. Of particular interest to today’s hearing, Director Cabrera and his team have developed a new prospective purchaser agreement process which allows the State to take control of abandoned mine sites that pose a critical threat, a threat to public health and the environment, in exchange for providing narrow
liability protections to parties not responsible for the initial contamination.

I want to thank Director Cabrera for getting up early this morning. I know it is early in Arizona.

Thank you again, Mr. Chairman, for leading this important hearing.

Senator Merkley. We are now turning virtually to hear Mr. Cabrera.

STATEMENT OF MISAEI CABRERA, P.E., DIRECTOR, ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. Cabrera. Senators Merkley and Duckworth, Ranking Members Wicker and Lummis, Senators Risch, Heinrich, and Kelly, and members of the Committee, thank you for this opportunity to express my support for Senate Bill 3571.

Most abandoned mines in Arizona ceased operations by the 1920s. These pre-regulation hardrock mines scatter the landscape, leaving behind mine waste, tailings, discharging adits, and open shafts.

I would be remiss if I did not mention that the risks and impacts of these abandoned pre-regulation mines are very different from modern, heavily regulated mines. This common sense distinction was recently affirmed by both the U.S. EPA and the D.C. Circuit Court of Appeals.

But there is no doubt that pre-regulation abandoned mine lands pose a risk to public safety and health and continue to degrade the natural environment. Over 120 Arizona stream miles are listed as impaired under the Clean Water Act for heavy metals frequently associated with abandoned mines. These streams feed larger watersheds that people depend on for recreation, irrigation, ranching, and are home to more than 150 endangered or threatened species.

One of these impaired streams is Pinto Creek in Gila County, Arizona. The Former Gibson Mine Site, which had been gifted to the Franciscan Friars in 1969, and whose previous owners and operators no longer exist, was the single largest copper source to the Pinto Creek watershed. Since 2006, significant reclamation activities have been carried out through public-private partnerships, including ADEQ grants.

Despite significant efforts, including a 75 percent reduction in the copper loading to Pinto Creek, the former Gibson Mine continues to be a source of copper concentrations to Pinto Creek, and at every turn, the specter of liability slows down the work.

ADEQ has worked with public and private partners to address nine legacy mine sites since 2015, and I can assure you that liability concerns are a frequent obstacle. In two of the nine sites, ADEQ signed a Prospective Purchaser Agreement with the new owners before the purchase. Arizona is one of a growing number of States with statutes that address liability issues associated with buying, selling, or developing property that has been contaminated.

However, these State agreements do not protect partners who are not purchasers, and in any case do not limit Federal actions and therefore liability associated with the Comprehensive Environmental Response, Compensation, and Liability Act, or the Clean Water Act. Providing meaningful incentives and protections to our
partners that are implementing work on the ground will allow ADEQ and others to continue to do and expand the work.

CERCLA and the Clean Water Act contain joint and several liability as well as other provisions that are helpful to holding responsible parties liable in the today. These same provisions only serve as obstacles and barriers to addressing pre-regulation abandoned mine lands where the responsible party no longer exists. And given that the U.S. General Accounting Office reports that about 22,500 abandoned mine features across the U.S. pose or may pose environmental hazards, we need solutions, not barriers.

Addressing Good Samaritans’ exposure to liability via the pilot program proposed in Senate Bill 3571 is a critical first step in allowing States, Tribes, new owners, non-profits, and volunteers to accelerate cleanups at abandoned mine lands. The Environmental Council of States, the national organization of the States’ top environmental leaders, is encouraged by and enthused about this bipartisan proposal to spur environmental remediation and source water protection.

There are others who have opposed Good Samaritan protections since 1999 when the first Good Samaritan bill was introduced in Congress. These voices focus on the possibility of abuse rather than the progress through real projects. This bill, if passed into law, will result in beneficial uses instead of hoping for blame and in reclamation that replaces resignation.

If coupled with funding of Section 40704 of the Infrastructure Investment and Jobs Act for abandoned hardrock mine reclamation, Congress will create a turning point in abandoned mine land reclamation that will make a significant and lasting difference in our precious surface waters and environment.

Thank you, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Cabrera follows:]
Testimony
U.S. Senate Committee on Environment and Public Works
Joint Subcommittees on
Chemical Safety, Waste Management, Environmental Justice and Regulatory Oversight
and Fisheries, Water and Wildlife
Thursday, September 29, 2022
by
Misael Cabrera, Director
Arizona Department of Environmental Quality

Chairs Merkley and Duckworth, Ranking Members Wicker and Lummis, Senators Risch and Heinrich, and members of the Committee, thank you for this opportunity to express my support for Senate Bill 3571. Most abandoned mines in Arizona ceased operations by the 1920s. These pre-regulation hardrock mines scatter the landscape, leaving behind mine waste, tailings, discharging adits, and open shafts. I would be remiss if I did not mention that the risks and impacts of these abandoned pre-regulation mines are very different from modern, heavily regulated mines. This common-sense distinction was recently affirmed by both the U.S. EPA and the DC Circuit Court of Appeals.¹

But there is no doubt that pre-regulation abandoned mine lands (AML) pose a risk to public safety and health and continue to degrade the natural environment. Over 120 Arizona stream miles are listed as “impaired” under the Clean Water Act for heavy metals, frequently associated with abandoned mines (i.e. cadmium, copper, lead, zinc). These streams feed larger watersheds that people depend on for drinking water, recreation, irrigation, ranching, and are home to more than 150 endangered or threatened species.

One of these impaired streams is Pinto Creek in Gila County, Arizona. The Former Gibson Mine Site, which had been gifted to The Franciscan Friars in 1969, and whose previous owners and operators no longer exist, was the single largest copper source to the Pinto Creek watershed.

Since 2006, significant reclamation activities have been carried out through public-private partnerships, including ADEQ grants. Despite significant efforts, including a 75% reduction in the copper loading to Pinto Creek, the Former Gibson Mine continues to be a source of copper concentrations to Pinto Creek, and at every turn, the specter of liability slows down the work. ADEQ has worked with public and private partners to address nine legacy mine sites since 2015 and I can assure you that liability concerns are a frequent obstacle.

In two of the nine sites, ADEQ signed a Prospective Purchaser Agreement with the new owners before purchase. Arizona is one of a growing number of states with statutes that address liability issues associated with buying, selling or developing property that has been contaminated. However, these state agreements do not protect partners who are not purchasers and, in any case, do not limit federal actions and therefore liability associated with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Clean Water Act. Providing meaningful incentives and protections to our partners that are implementing work on the ground will allow ADEQ and others to continue to do and expand the work.

CERCLA and the Clean Water Act contain joint and several liability as well as other provisions that are helpful to holding responsible parties liable in the today; these same provisions only serve as obstacles and barriers to addressing pre-regulation AMLs where the responsible party no longer exists. And given that the U.S. General Accounting Office reports that about 22,500 abandoned mine features across the U.S. “pose or may pose environmental hazards”, we need solutions not barriers.

Addressing Good Samaritans’ exposure to liability via the pilot program proposed in Senate Bill 3571 is a critical first step in allowing states, tribes, new owners, non-profits, and volunteers to accelerate clean-ups at AMLs. The Environmental Council of States, the national organization of

the states’ top environmental leaders is encouraged by and enthused about this bipartisan proposal to spur environmental remediation and source water protection. There are others who have opposed good samaritan protections since 1999 when the first good samaritan bill was introduced in Congress. These voices focus on the possibility of abuse rather than progress through real projects. This bill, if passed into law, will result in beneficial uses instead of hoping for blame and in reclamation that replaces resignation. And if coupled with funding of Section 40704 of the Infrastructure Investment and Jobs Act, for abandoned hardrock mine reclamation, Congress will create a turning point in AML reclamation that will make a significant and lasting difference in our precious surface waters and environment. Thank you and I am happy to answer any questions.
August 29, 2022

Steven Feldgus, Deputy Assistant Secretary
Bureau of Land Management, Division of Solid Minerals
1849 C Street NW, Room 5645
Washington, DC 20240

Also submitted to: https://www.regulations.gov


Dear Mr. Feldgus:

This letter is in response to the Interagency Working Group (IWG) request for information (RFI) issued March 31, 2022. The Arizona Department of Environmental Quality (ADEQ) will address the following questions posed in the RFI:

- What would a successful mine reclamation program include? Are there existing programs that the U.S. should adopt?
- What changes to financial assurance requirements for mining should be considered?
- How might the U.S. best support reclamation of existing AML sites, including the development of meaningful good Samaritan proposals as well as remining and reprocessing of mine tailings and waste, where feasible?
- What improvements can be made to the mine permitting process without reducing opportunities for public input or limiting the comprehensiveness of environmental reviews?

In addition to addressing the questions above, this letter begins by highlighting the following:

- The enormous difference between abandoned, pre-regulation mines and heavily regulated modern mines,
- The sheer importance of mining to a green future, and
The environmental risks of overreliance on international mining for minerals and rare earth elements (REE).

**MODERN MINES AND ABANDONED PRE-REGULATION MINES ARE VERY DIFFERENT**

Mining can be traced back tens of thousands of years to ancient civilizations. And in the US, the General Mining Act of 1872 codified practices that not only helped usher in our modern society but also closed the legal vacuum that early American miners found themselves in. Unfortunately, and similar to other industries of the era, the environmental impacts were not obvious.

It wasn’t until the 1960s and 1970s that state and federal regulations began to take shape. In the today, state and federal regulations form a robust mosaic of protections for every operating mine. Conflating the risks and impacts of abandoned pre-regulation mines with modern mines is akin to confusing the health detractors of pizza with those of salad because they are both food.

This common-sense differentiation between pre-regulation abandoned mines and modern mines is supported by both EPA and the courts. In a recent opinion of the DC Circuit Court of Appeals, Judge Henderson reiterated USEPA’s assertion that, “...some of the sites... operated before the development of modern mining regulatory schemes, rendering their ‘legacy contamination’ irrelevant in determining modern mining risks.”

**MODERN MINING IS A CATALYST FOR GREEN TECHNOLOGY**

Mineral resources are not just a part of our past, they constitute an essential part of our future. The 2020 World Bank Report, Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition, states plainly that green energy technologies are more mineral intensive relative to fossil fuel technologies. Further, the report asserts that, “Because of the material intensity of low-carbon technologies, any potential shortages in mineral supply could impact the speed and scale at which certain technologies may be deployed globally.” Thus, the speed of decarbonization relies heavily on the ready supply of minerals and consequently the productivity of hardrock mining.

In fact, in order to limit the rise in global temperature to less than 2 degrees Celsius above pre-industrial levels as proposed by the International Renewable Energy Agency, demand for metals like aluminum, indium, and silver are expected to increase by more than 300 percent by 2050.

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4. See id. at 2.
Demand for copper, iron, lead, neodymium, and zinc is expected to increase by more than 200 percent.  

Copper, which some refer to as an "essential metal for the energy transition" is an important mineral produced in Arizona. Global demand for copper used in alternative energy production and consumption is projected to increase from 2.1 million tons in 2020 to 4.3 million tons in 2030. This is not hard to imagine given that fully electric vehicles require roughly 400% more copper than average gasoline powered automobiles. "But demand for the metal won't just come from the cars themselves. Copper used for [electric vehicle] charging stations is also expected to rise more than 1,000% by 2030, compared to 2020".

Further, lithium and cobalt demand could increase 10 to 20 times by 2050 because of transportation electrification. Demand for dysprosium and neodymium is estimated to increase seven to twenty-six times over the next 25 years as a result of electric vehicles and wind turbines.

Certainly, recycling and reuse will play an important role in addressing the increased demand for minerals but additional extraction is not optional. The World Bank reports that "Even with large increases in recycling—including a scenario where 100 percent [end of life] recycling is achieved—there is still likely to be strong demand for primary minerals".

Decarbonization of the energy and transportation sectors will clearly increase demand for minerals and rare earth elements (REE) but we would be remiss to exclude the increased demand for minerals and REE in consumer products. Everything from the iPhone to LED lights to smart TV's use REEs and as the population increases, so will demand.

**RISKS OF RELYING ON INTERNATIONAL SOURCES OF MINERALS**

President Biden acknowledges the inherent risk of relying too much on foreign sources of critical minerals. In his March 31, 2022 Memorandum to the Secretary of Defense he writes, "The United States depends on unreliable foreign sources [emphasis added] for many of the strategic and critical materials necessary for the clean energy transition—such as lithium, nickel, cobalt, graphite, and manganese for large-capacity batteries".

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5 See id. at 2.
6 See id. at 2.
9 See id. at 2.
10 See id. at 8.
The Memorandum further states that, “...sustainable and responsible domestic [emphasis added] mining, beneficiation, and value-added processing of strategic and critical materials for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors are essential to the national defense...”11

Unfortunately, the risks of relying on foreign sources of minerals is not limited to defense or a clean energy transition – the risk to the planet is present given that few mineral-producing countries enforce environmental regulations as well as the U.S. China is the clearest example of a mining and processing country that is contributing heavily to global pollution.

China currently produces 8 times more REE tonnage than the U.S. and accounted for 85 percent of the global supply of REE in 2016.12 “China was only able to establish such dominance over the REE industry in large part because of lax environmental regulations. Low cost, high pollution methods enabled China to outpace competitors and create a strong foothold in the international REE market”. Examples include the largest REE mine in the world in Bayan Obo, China where an improperly lined tailings pond contains over 70,000 tons of radioactive thorium. Toxic chemicals have been seeping into groundwater and will eventually hit the Yellow River, a key source of drinking water. Currently, the sludge is moving at a pace of 20-30 meters per year, a dangerously rapid rate.13

And China’s dominance is not limited to REEs. In 2020, China led all other countries in copper smelting, producing over 7.2 million metric tons of the commodity. The closest competitors, Japan and Chile, only produced 1.7 and 1.2 million metric tons, respectively.14 Unfortunately, much of that smelting capacity is powered by fossil fuels.15 China is the world leader in carbon dioxide (CO2) emissions with more than 2.5 times as many emissions as the U.S. And from 2017 to 2020, China’s CO2 emissions actually increased by 7 percent while U.S. CO2 emissions decreased by 11 percent.16

In summary, the Interagency Working Group should weigh the environmental and supply chain risks of increasing regulation on already heavily regulated modern mines. This is especially true given the robust state and federal regulatory frameworks already in use.

12 See id. at 8.
13 See id. at 8.
WHAT WOULD A SUCCESSFUL MINE RECLAMATION PROGRAM INCLUDE? ARE THERE EXISTING PROGRAMS THAT THE U.S. SHOULD ADOPT?

It is critical to acknowledge that current mines operate under a host of state and federal environmental regulations that govern the design and operation of a mine prior to reclamation. To state the obvious, the more protections that are in place – and there are many – prior to reclamation, the fewer the risks that must be addressed through reclamation. In addition, many states, including Arizona, have already adopted reclamation laws that in combination with other environmental laws effectively govern modern hardrock mines.

Arizona and other states have accumulated decades of experience regulating and working with hardrock mining facilities to prevent potential releases to the environment, including post-closure monitoring. State programs have been amended and improved to adopt best available controls and mitigate risks both at the statutory and regulatory level. Three key programs in Arizona include:

- The Aquifer Protection Permit (APP) Program,
- The Arizona Pollution Discharge Elimination System (AZPDES), and
- The Arizona Mine Lands Reclamation Act.

The AZPDES Program is simply Arizona’s implementation of Section 402 of the Clean Water Act that operates under USEPA oversight; therefore, a description of that program as it relates to hardrock mining, a topic that USEPA is certainly familiar with, is not included in this discussion.

ARIZONA AQUIFER PROTECTION PERMIT PROGRAM

ADEQ protects the state’s groundwater resources, the vadose zone, and soils from activities that have a potential to discharge pollutants through its APP program on both public and private lands. Arizona’s APP program is a mature program that became fully effective on September 27, 1989. The three central requirements for an individual APP permit are (1) the protection of aquifer water quality standards (AWQS) at the applicable Point of Compliance, (2) the implementation of best available demonstrated control technology (“BADCT”), and (3) the provision of financial assurance to cover closure of all discharging facilities and, if necessary, to conduct postclosure monitoring and maintenance.

Arizona’s APP program protects aquifers by ensuring that facilities are designed, constructed, operated, maintained and closed in a fashion that ensure that potential discharges of pollutants to an aquifer or the vadose zone are properly controlled or eliminated. The term “pollutant” is defined broadly to include, among other things, any liquid, solid, gaseous, or hazardous substance. Therefore, Arizona’s programs address the universe of facilities and the substances within the scope of the environmental protection.

17 A.R.S. §§ 49-241 to 252; 18 A.A.C. 9, Arts. 1-3 & 18, A.A.C. 11, Art. 4
18 A.R.S. §§ 49-261 to -263, 49-223(A); A.A.C. R18-9-110(B) & R18-9-2115(A)(5).
19 A.R.S. § 49-201(35).
Certain facilities are categorically defined as "discharging facilities" that must be operated pursuant to an individual or general APP. Categorically discharging facilities are automatically regulated by the APP program. Facilities not within the mandatory permit categories listed still must obtain an APP if there is a "reasonable probability" that a "discharge" of a "pollutant" from the facility will reach an aquifer.  

In addition to ensuring AQSs at the applicable point of compliance (POC), an individual APP applicant must show that its facility is designed, constructed, and operated to ensure the greatest degree of discharge reduction achievable through the application of BADCT, including, where practicable, a technology prohibiting the discharge of all pollutants.  

A facility must provide substantial, detailed, site- and facility-specific information as part of the APP application and amendment processes. For instance, applications generally require the submission of facility-specific information such as as-built drawings, information detailing how the facility will be operated, existing and proposed pollutant control measures, potential pollutants and closure strategy. Furthermore, site-specific information must include a hydrogeologic study of the discharge impact area, as well as information about the groundwater quality in the area and the use of water from aquifers in the area. Also required is information such as detailed maps that show property lines, topography, and all types of wells and points of compliance; facility design documents; detailed information about known past discharges; and, detailed information about the BADCT to be used at the facility.  

ADEQ has developed a BADCT Guidance Document specifically for mining facilities. That Guidance Document, which runs hundreds of pages in length, establishes prescriptive and individual BADCT requirements for the main types of discharging facilities found at mining operations (e.g., non-stormwater ponds, process solution ponds, heap leach pads, tailing impoundments, dump leaching facilities, in-situ leaching).  

Moreover, the BADCT guidance provides approaches for sampling and addressing potentially impacted soil at ponds that could impact groundwater. It states that, where required, permittees must conduct soil remediation to prevent groundwater impacts, underscoring the multi-media scope of the analysis. If soil remediation is required, residual soil conditions must be reviewed and approved by ADEQ after it is completed (followed by, e.g., filling and grading to minimize future infiltration).  

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20 A.R.S. § 49-241(A).  
21 A.R.S. § 49-243(B)(1).  
24 A.A.C. R18-9-1202.  
“Postclosure monitoring and maintenance” are activities conducted after closure notification that are necessary to (1) keep the facility in compliance with AWQS at the applicable POC, (2) verify that actions or controls specified as closure requirements in an approved closure plan are routinely inspected and maintained, (3) perform any remedial, mitigative, or corrective actions or controls as specified in the APP or as necessary to comply with the APP statute, and (4) meet property use restrictions.  

ARIZONA MINED LAND RECLAMATION PROGRAM

Arizona’s Mined Land Reclamation (MLR) Act is a successful example of how many states have been protecting public lands. The MLR program was intended to complete a comprehensive scheme of Arizona and federal laws and regulations that govern the environmental performance and reclamation of hard rock mining and exploration operations in Arizona. Arizona’s MLR program of 1994 was not intended to replace or duplicate statutory provisions relating to environmental protection such as Arizona’s APP program. The purpose of the MLR program is to provide for the reclamation of land that is being mined and to fill the gap in existing laws by requiring the reclamation of land that is currently being mined or that has been mined since January 1, 1986, to provide for future land use. Arizona’s MLR program applies to mining operations that are larger than five acres and requires such operations to conduct reclamation of surface disturbances to achieve a safe and stable condition consistent with the post-mining land uses specified in a reclamation plan.

The MLR reclamation plan for mining operations must include, among other things, (1) a proposed reclamation measures to achieve the proposed post-mining land use including measures to (a) restrict public access to pits, adits, shafts, and other safety hazards, (b) achieve erosion control and stability, (c) address revegetation and conservation, and (d) promote wildlife or fish habitat for surface disturbances where the proposed post-mining land use objective is designated as grazing, fish or wildlife habitat, forestry, or recreation, and (2) estimated costs to perform each of the proposed reclamation measures for purposes of determining financial assurance.

In summary, a successful mine reclamation program would include all the components discussed above, including:

- Pre-construction permitting,
- Clear criteria for environmental performance during and after mining operations, including closure and post-closure,
- Compliance monitoring, inspections and enforcement during operations,
- Enforcement mechanisms in place during operations,
- Submittal and approval of a Mine Reclamation Plan,

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26 See A.R.S. §§ 49-201(3).
27 See A.R.S. §§ 27-902(B).
28 See A.R.S. §§ 27-901 to 27-1026, 27-901(13); 11 A.A.C. 2, 27-901(13).
29 See A.R.S. § 27-901(13), 27-971(B)(9), (11).
Sufficient financial assurance (discussed in detail in the next section).

Given that these components already exist as a function of state regulation in Arizona and other states, cooperative federalism would indicate that states with robust programs be exempted from any future hardrock mining reclamation requirements.

**WHAT CHANGES TO FINANCIAL ASSURANCE REQUIREMENTS FOR MINING SHOULD BE CONSIDERED?**

Modern mines are required to provide state and federal agencies with financial assurance to ensure the mine will be properly operated and reclaimed. Unlike orphaned mines prior to the 1960’s, today’s mines provide a host of financial risk mitigation strategies for states and taxpayers. The figure below illustrates the point for a mine in Arizona that utilizes both state and federal lands.

Modern operating mines have a variety of risk mitigation mechanisms in place to ensure that states and taxpayers are not burdened with mine clean-up:

- Corporate income taxes are used to fund the Water Quality Reaching Fund, which includes monies for orphan site clean-up.
- Covers closure, post-closure and remediation of unpermitted releases.
- Covers damage to lands, water and other tangible improvements.
- Covers reclamation of land.
- Protects Federal Lands.
- Requires disclosure of environmental liability – influences balance sheet.
- Courts have prioritized reclamation in bankruptcy proceedings. (e.g. ARCO Multi-State Trust).

The unmitigated risks of abandoned hard rock mines should not be attributed to highly regulated, modern-day mines.
Like many other states, Arizona has extensive experience mitigating financial risks associated with hardrock mines. Arizona’s experience includes:

- The Aquifer Protection Permit (APP) Financial Assurance,
- State Trust Lands Reclamation Bonding,
- The Arizona Mine Lands Reclamation Financial Assurance, and
- Experience functioning as a Natural Resources Damages Trustee.

**APP Financial Assurance**

In Arizona, the APP program imposes financial assurance for facilities that are subject to individual APP requirements, and requires that it be posted before operations commence. APP regulations provide that owners or operators of discharging facilities must demonstrate “financial capability to construct, operate, close and ensure proper post-closure care of the facility.”

Financial assurance mechanisms are required to be issued in the name of ADEQ. Specifically, the owner or operator of any discharging facility required to obtain an individual APP must provide a financial assurance mechanism to ADEQ sufficient to cover the costs to close the discharging facility and to conduct necessary postclosure monitoring and maintenance prior to receiving approval to operate.

Permittees also are required to regularly demonstrate maintenance of financial assurance to ADEQ. Additionally, if ADEQ believes that a permittee has the potential to lose its financial capability, ADEQ can require evidence of financial assurance or an alternative financial assurance mechanism. Permittees only are allowed to substitute financial assurance mechanisms if the substitute mechanism has been approved through a permit amendment. ADEQ has broad permit revocation and enforcement powers in the event of any potential financial assurance default.

Typically, in order for a discharging facility to no longer require permit coverage and associated financial responsibility, it must have undergone “clean closure.”

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31 A.A.C. R18-9-A203(C)(2)(d), (3)(c), (4)(c), (5)(c), (6)(g), (7), (8)(a)(vii).
34 A.A.C. R18-9-A203(D).
35 A.A.C. R18-9-A203(E), (F).
“Clean closure” means “implementation of all actions specified in an aquifer protection permit, if any as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards to the applicable point of compliance or, if an aquifer water quality standard is exceed at the time the permit is issued, causing further degradation of the aquifer at the application point of compliance . . .”38

“Clean closure” also means “post-closure monitoring and maintenance are unnecessary to meet the requirements in an [APP].”39 As noted above, ADEQ’s BADCT Guidance Document has provisions for soil remediation as part of the closure process for non-stormwater and process pond mine facilities, to the extent that soils could have a potential to discharge pollutants to groundwater. Clean closure may be approved by ADEQ for a former discharging facility if the following conditions are met: (1) The closure complies with all the terms of an existing individual APP; (2) The closure eliminates all discharges from the facility to the greatest degree practical; (3) There is no reasonable probability that the facility will exceed AWQS at the applicable POC due to a discharge; and (4) As closed, the facility does not require post-closure monitoring or maintenance.40 As part of the application process for clean closure approval, ADEQ generally requires that permittees submit a description of any anticipated remediation activity(s) to be implemented, including if applicable soil remediation levels or groundwater protection levels are exceeded for contaminants detected during the investigation.

ADEQ has refined and enhanced the APP program over time to account for specific types of mine features.41 ADEQ’s Revenue Audit Supervisor in the Business and Finance Office examines the sufficiency of the proposed financial assurance mechanism.

The APP financial assurance requirement is intended to help protect the taxpayers from bearing the costs of unpermitted discharges to the environment. In addition, ADEQ has broad enforcement options to respond to a noncompliant company or permittee, including issuance and enforcement of compliance orders, suspension, withdrawal, or revocation of permit coverage, injunctive relief, and imposition of civil penalties.42

STATE LANDS RECLAMATION BONDING PROGRAM

Separately and additionally, Arizona State Trust Land lessees who conduct hard rock mining are required to post a reclamation bond and generally provide other financial assurances.43

38A.R.S. § 49-201(5).

39 See id.
40 See A.R.S. § 49-201(5).
41 See, e.g., A.R.S. § 49-241(G).
43 See A.A.C. R12-5-1805(1).
Significantly, Arizona’s separate law protecting its State Trust Land requires that a bond be provided in “a reasonable principal amount” for the purpose of protecting against “damage to lands, livestock, water, crops or other tangible improvements.”\(^{44}\) This is in addition to the APP and MLR program provisions outlined above. The Arizona State Land Department manages approximately 9 million acres in Arizona pursuant to a trust created by the Arizona Enabling Act and Constitution. Applicants and lessees who fail to post a bond are deemed to have forfeited their lease.\(^{55}\)

**ARIZONA MINE LANDS RECLAMATION FINANCIAL ASSURANCE**

Arizona’s MLR program duplicates financial assurance required under other federal or state laws.\(^{46}\) The owner or operator of any mining operation subject to Arizona’s MLR program must transmit a financial assurance mechanism to the Arizona State Mine Inspector (ASMI) within 60 days after a reclamation plan receives agency approval. The financial assurance mechanism must equal the cost to perform the reclamation measures stated in the approved reclamation plan. This applies with the exception of an exploration operation or a mining unit located on land administered by a federal agency, in which case, an approved federal reclamation plan and a financial assurance mechanism for the federal land supersedes the requirements for a reclamation plan and financial assurance mechanism otherwise required.\(^{47}\)

When calculating reclamation costs, the ASMI will assume that third parties will perform the reclamation measures unless the owner or operator demonstrates certain financial ability to perform the reclamation measures.\(^{48}\) This amount can be reduced to the costs of the owner or operator to perform the reclamation if sufficient financial ability is demonstrated. The amount of financial assurance required will be adjusted by the agency at least once every 5 years to provide for reclamation of new areas of planned surface disturbances, inflation, and changed costs associated with modifications to the approved reclamation plan.\(^{49}\)

The amount of FR for mining operations is based on estimated costs in current dollars for (1) performing the approved reclamation measures stated in the reclamation plan and (2) providing continued care and monitoring of the acres stated in the reclamation plan for revegetation for up to three growing seasons after reclamation has been completed.\(^{50}\)

\(^{44}\) See id.  
\(^{45}\) See id.  
\(^{46}\) See A.R.S. §§ 27-971(B)(9), (11), 27-994.  
\(^{47}\) A.R.S. § 27-992(B).  
\(^{48}\) A.R.S. § 27-992(B).  
\(^{50}\) A.R.S. § 27-992(C).
When calculating reclamation costs, all activities in the mine’s reclamation plan must be addressed including: (1) earth moving, regarding, and stabilization of surface disturbances; (2) revegetation, preparation of seedbed, and planting; (3) demolition of buildings and other structures; (4) any ongoing or long-term activity which area required to maintain the effectiveness of reclamation or are necessary in place of reclamation, including periodic cleanout of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to public safety; (5) equipment mobilization and demobilization; (7) contractor profit; and (8) administrative overhead.\footnote{A.A.C. R11-2-802(A).}

Finally, owners or operators of mining operations must provide the source of all estimated costs as well as documentation for the calculation of such costs.\footnote{A.A.C. R11-2-802(B).} Any, or a combination, of financial mechanisms common to other financial responsibility programs are acceptable under the MLR program.\footnote{A.R.S. § 27-991(B).} Funds covered by a financial mechanism also can be released to the owner or operator of a mining operation upon receipt by the ASMI of an alternate financial assurance mechanism that meets the requirements of Arizona’s MLR program.\footnote{A.A.C. R11-2-817(B), R11-2-817(E).} Under the MLR program, financial assurance may be forfeited in specific occurrences.\footnote{A.A.C. R11-2-817(B), R11-2-818(A).}

ASMI has broad enforcement options under Arizona’s MLR program that it can take against a noncompliant company, including issuance and enforcement of compliance orders, suspension, withdrawal, or revocation of reclamation plan approval, injunctive relief, and imposition of civil penalties.\footnote{A.R.S. §§ 27-1021 to 27-1026.} The MLR statute specifically provides that financial assurance is not required under the MLR program if the financial assurance would duplicate financial assurance required under other state or federal laws.\footnote{See id. § 27-894.} An owner or operator of a mining operation could submit a formal request to the ASMI for release of MLR financial assurance on the grounds that it duplicates financial assurance required under another governmental program.\footnote{A.R.S. §§ 27-994, A.R.S. 27-996.}

**NATURAL RESOURCES DAMAGES COVERAGES**

Arizona also has assumed responsibility for addressing potential Natural Resource Damages ("NRD") that may arise from mining activities, and has experience with successfully resolving NRD claims related to prior mining activities. Arizona’s state natural resource trustee is the Director of ADEQ. As the state trustee, the Director has authority, to take all actions necessary to carry out the responsibilities of the natural resource trustee provided under CERCLA.\footnote{See A.R.S. §§ 49-282 and 49-287.} This includes actions for the recovery of damages and related costs for injury to, destruction of, or loss of the State’s natural resources.
ADEQ has experience with developing and successfully resolving NRD claims related to mining activities. For instance, during the Chapter 11 reorganization of ASARCO LLC, the State successfully settled claims regarding two ASARCO-related active sites that had each been operating for over a century for approximately $30 million in 2009.60 The NRD portion of the settlement, according to the terms filed with the United States Bankruptcy Court for the Southern District of Texas, included about $4 million in unsecured claims (ultimately paid in full) and the transfer of approximately 1,000 acres, valued between $3 million and $4 million, to the Arizona Game and Fish Commission for the preservation of wildlife.61

Similarly, in 2012, the State reached a $6.8 million settlement with Freeport-McMoRan Corporation related to potential injuries to natural resources that related to alleged hazardous substance releases at and from the company’s Morenci Mine site in eastern Arizona.62 Settlement funds ultimately have been applied to the restoration of aquatic and wildlife populations and their habitat. Therefore, Arizona has demonstrated the authority and experience to properly address NRD issues that may potentially arise in the future from mining activities within the State.

Notably, the two ASARCO-related sites mentioned above have since been purchased by new operators, good Samaritans, who have redeveloped the sites for both environmental and economic benefit. (More on this in the abandoned mine lands section below.)

USEPA AND THE COURTS AGREE THAT CURRENT FINANCIAL ASSURANCE MECHANISMS ARE SUFFICIENT

State experience and competency with hardrock mining financial assurance was recognized by USEPA in its 2018 decision to not issue financial assurance rules. “EPA has reconsidered its assessment of the risks posed by hardrock mining operations presented in the proposed rule, and determined that that assessment did not adequately consider the degree to which existing federal and state regulatory programs [emphasis added] and improved mining practices at modern mines reduce the risk that there would be unfunded response liabilities at currently operating mines.” The Federal Register continues to state that “EPA has analyzed the need for financial responsibility based on risk of taxpayer funded cleanups at hardrock mining facilities operating under modern management practices and modern environmental regulations...[T]he degree and duration of risk associated with the modern production, transportation, treatment, storage or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of [additional] financial responsibility requirements for this sector.”63

61 See id.
This common-sense decision by USEPA has also withstood legal scrutiny. In Idaho Conservation League et al. versus Andrew Wheeler and the U.S. Environmental Protection Agency, Petitioners' contested USEPA's decision. The U.S. Court of Appeals for the District of Columbia denied the request to vacate USEPA's final rulemaking on July 19, 2019. In filing the opinion of the Court, Judge Henderson reiterates USEPA's Final Rule Technical Support Document,

"...some of the sites discussed in the Proposed Rule operated before the development of modern mining regulatory schemes, rendering their 'legacy contamination' irrelevant in determining modern mining risks."

Clearly the DC Circuit Court and USEPA recognize the difference between problematic abandoned mine lands of the past and modern, heavily regulated mines of today. USEPA explained and the court validated that it is inappropriate to point to facilities abandoned prior to regulation and conclude that modern, mines pose similar risks.

**HOW MIGHT THE U.S. BEST SUPPORT RECLAMATION OF EXISTING AML SITES, INCLUDING THE DEVELOPMENT OF MEANINGFUL, GOOD SAMARITAN PROPOSALS AS WELL AS REMINING AND REPROCESSING OF MINE TAILINGS AND WASTE, WHERE FEASIBLE?**

There is no doubt that abandoned mine lands (AML) pose a risk to public safety and health and continue to degrade the natural environment. Most abandoned mines in Arizona ceased operations by the 1920s. These pre-regulation mines scatter the landscape, leaving behind mine waste, tailings, discharging adits, and open shafts.

Over 120 Arizona stream miles are listed as "impaired" under the Clean Water Act for heavy metals, often associated with abandoned mines (i.e. cadmium, copper, lead, zinc). These streams feed larger watersheds that people depend on for drinking water, recreation, irrigation, and ranching, and are home to over 150 endangered or threatened species like the Mexican spotted owl and jaguar. In Arizona, abandoned mine reclamation activities are widely supported by state government partners, industry, non-governmental organizations, and private landowners.

The U.S. can best support reclamation of AML sites by:

- Funding Section 40704 of the Infrastructure Investment and Jobs Act, for abandoned hardrock mine reclamation, and
- Working with Congress to pass meaningful CERCLA liability protections for private parties who seek to make beneficial use of AML sites.

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The Infrastructure Investment and Jobs Act (IIJA) directed the Department of the Interior to establish a program to “inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land.”

This proposal passed with bipartisan support and included a $3 billion authorization. FY-23 appropriations are vital to jumpstart this initiative. Funding provided to this effort should bolster, not supplant, separate appropriations under the USEPA’s Superfund program or other IIJA or Department of Interior programs.

Realizing the urgency of AML sites and working in partnership with ADEQ, the Arizona Board of Regents has approved $1.5 million for a three-year study by a multi-disciplinary, cross-university team of engineers, biologists, geologists and risk assessors, to:

- Inventory abandoned mining sites in Arizona,
- Identify potential risks posed,
- Rank hazardous sites using a risk assessment framework, and
- Create multiple work products to support the successful near- and long-term management of the sites.

ADEQ would appreciate the opportunity to partner with the Department of Interior to accelerate the inventory and add a component that evaluates the economic value, if any, of AML wastes. As mentioned previously, ADEQ has successfully worked with private partners to redevelop two sites resulting from the ASARCO bankruptcy:

- Hermosa Mine, Santa Cruz County, Arizona
  - More than 2 million tons of old tailings material, dried and moved to a modern, lined and permitted impoundment,
  - Stormwater run-off and tailings underdrain collection channeled to a state-of-the-art water treatment plant,
  - In process of closure of a passive wetland treatment system and redirection of discharge to the new wastewater treatment plant,
  - Total cost of remediation reported as $30 million
  - Potential to be a globally significant producer of metals for a low carbon future
  - Pre-Feasibility Study estimates annual average production of roughly 111 kilotons (kt) of zinc, 138 kt lead and 7.5 million ounces of silver.

- Sacaton Mine, Pinal County, Arizona
  - Consolidating and capping 350 acres of exposed tailings from previous operations,
  - Revegetating 463 acres to establish shrub-dominated vegetation community across the site at a cost of approximately $1 million,
  - Drainage modifications to contain and redirect stormwater across the site away from pollutant sources,
  - Installation of 10 new point of compliance monitoring wells to assist with Aquifer Protection Permitting,
Process the ore from the 560 acres of waste rock that is now economically viable for start-up financing of overall mine operation, potentially producing 182 million pounds of copper.
- Re-opening of the mine is projected to produce 1,400 direct and indirect jobs
- Pre-Feasibility study shows strong economics projecting generation of approximately $85 billion in revenue from copper, molybdenum, gold and silver production over a 28-year estimated lifespan.

The above examples are indicative of what is possible when liability relief is addressed for new responsible operators of AMLs. In each of the sites above, ADEQ signed a Prospective Purchaser Agreement (PPA) with the operators before purchase. The PPA limits the new owner’s liability in exchange for providing a substantial public benefit to Arizona.

Arizona is one of a growing number of states with statutes that address liability issues associated with buying, selling or developing real property contaminated or potentially contaminated by hazardous substances. Pursuant to Arizona Revised Statute (ARS § 49-285.01), ADEQ may enter into a PPA that provides a written release and covenant not to sue for potential Water Quality Assurance Revolving Fund (State Superfund) liability and for potential owner liability to the State under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the existing contamination at the property, if certain statutory conditions are met.

Addressing Good Samaritans’ exposure to liability under the Clean Water Act and CERCLA via the pilot program proposed in Senate Bill 3571 is a critical step in allowing states and tribes to fully realize the potential benefits of the Hardrock Mine Reclamation Fund established by the IIJA. With national leadership, an established program, funding, and resources, the legacy of mining in Arizona and throughout the west can be one that is sustainable for future generations.

WHAT IMPROVEMENTS CAN BE MADE TO THE MINE PERMITTING PROCESS WITHOUT REDUCING OPPORTUNITIES FOR PUBLIC INPUT OR LIMITING THE COMPREHENSIVENESS OF ENVIRONMENTAL REVIEWS?

Public Law 117-58, also known as IIJA, reinstates and codifies the “One Federal Decision” (OFD) streamlined environmental review process for major infrastructure projects. Applying OFD to major mining projects is by far the most significant improvement that the IIW could recommend.

The OFD streamlined environmental review process, first established in a Trump-era executive order, was revoked by President Biden early in 2021, but signed into law as part of IIJA later the same year. Sections 11301 through 11319 of IIJA require cooperation between agencies, concurrent review processes and the creation of a “permitting timetable” with a fixed deadline. This process is managed through a lead federal agency for both federal and non-federal projects.
IIJA specifically states that, "To the maximum extent practicable and consistent with applicable Federal law, in the case of a major project, the lead agency shall develop, in concurrence with the project sponsor, a schedule for the major project that is consistent with an agency average of not more than 2 years for the completion of the environmental review process for major projects..." IIJA also requires that federal agencies "identify the categorical exclusions that would accelerate delivery of a project if those categorical exclusions were available to those agencies" within six months of IIJA enactment and every four years after that.

In 2017 and 2018, the first two years piloting and implementing OFD, the National Environmental Policy Act (NEPA) process timelines were reduced by over 10%.64 By July of 2020, Mary Neumayr, Chairman, Council on Environmental Quality (CEQ), and others published a presentation showing that average completion time for environmental impact statements from notice of intent to record of decision between September 2019 and March of 2020 was 22.69 months – almost a 60% improvement over 2018.65

Given that mining is so inextricably linked to, and upstream in the supply chain of infrastructure, it follows that utilizing a proven federal approach, that does not reduce the opportunity for public involvement, is advisable. Accelerating environmental review through OFD for major projects serves no purpose if supply chain (mining) limitations delay projects nevertheless.

CONCLUSION

When considering improvements to state of federal regulations it is important to distinguish where the greatest risks lie. The figure below depicts some of the risks that the IWG may be considering. We believe that modern US mines present relatively low environmental risk when compared to AML, the risk of global pollution as a result of over-reliance on foreign mining, and the potential for decarbonation delays because of supply chain constraints. When we add national defense vulnerabilities and American jobs, the asymmetric risk of overregulating modern mines becomes very clear.


global pollution by accelerating environmental review for major mining projects by using the one federal decision approach codified in IJUA.

Sincerely,

Miguel Cabrera, P.E.
Director

cc: U.S. Senator Mark Kelly
    U.S. Senator Kyrsten Sinema
October 27, 2022

Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

To Whom It May Concern:


Thank you for the opportunity for me to provide responses to your follow-up questions from my testimony on September 29, 2022. For clarity, we have formatted the questions in italics and the answers in standard font.

**Questions from Chairman Carper:**

1. **Communities in close proximity to abandoned hardrock mines have a vested interest in the outcomes of Good Samaritan projects. Robust public engagement is vital for successful cleanup efforts, as local entities often have a unique understanding of the specific hazards associated with abandoned mine sites. The bill as written provides limited opportunities for public comment on proposed projects, but final approval of a Good Samaritan permit lies with the Federal government. From your perspective as a leader of a state agency that will be involved in Good Samaritan cleanups, do you believe that the current legislation provides the appropriate level of public engagement in the approval process?**

   Yes. I respectfully disagree that the bill as written only provides limited opportunities for public comment. The legislation currently subjects Good Samaritan permits to public notice and comment and a hearing if requested, and requires the Administrator (with 14 days of application receipt) to provide notice and a copy of the application to:

   - Each local government with jurisdiction over a drinking water utility, and each Indian tribe with reservation or off-reservation treaty rights to land or water, located downstream from a proposed remediation project that is reasonably anticipated to be adversely impacted by a potential release of contaminants from the abandoned mine site, as determined by the Administrator;
   - Each Federal, State, and Tribal agency that may have an interest in the application; and
In the case of an abandoned mine site that is located partially or entirely on land owned by the United States, the Federal land management agency with jurisdiction over that land.

The public process described in S.3571 is substantially similar to that of many federally authorized permits issued by States under Clean Water Act, Clean Air Act and the Resource Conservation and Recovery Act, i.e. permits that provide authorization to discharge pollutants within legal limits. I cannot reasonably comprehend why Congress would hold the removal of pollutants from the environment to a higher standard than the release of pollutants to the environment.

a. Please describe your recommendations to expand the role of States, Tribes, and other local stakeholders in the approval process for Good Samaritan permits.

This is a limited pilot program and pilot programs are designed to test and learn. If Congress determines that additional public input is warranted based on the data observed during the pilot program, it could more reasonably defend the imposition of additional requirements in subsequent legislation that authorizes a full program.

2. The Good Samaritan proposal provides broad liability protections that extend in perpetuity beyond the date of permit termination. This means that any permanent project infrastructure must continue to function in the removal of pollutants from approved points of discharge or protect against future releases. How do you envision the State’s role in the management of Good Samaritan sites and ensuring accountability once permits have been terminated?

In the unlikely event that the U.S. EPA public notices a permit that does not include long-term maintenance and monitoring for planned infrastructure that requires it, Arizona would evaluate the existing negative impact of the abandoned mine on the environment against the potential future risk of a remedy that lacks long-term monitoring and maintenance. If the existing negative impact is substantially greater than the future potential risk, ADEQ would reach out to the applicant to negotiate terms for long-term operations. If the existing negative impact is substantially less than the future potential risk, ADEQ would oppose the permit.

a. Does the legislation as written provide enough assurance that States, Tribes, and other stakeholders can pursue legal action in the event of negligence, misuse, or abuse?

Yes. The legislation states the following in Section 4(13)(C): "If a Good Samaritan ... violates the terms of a Good Samaritan permit and that violation results in surface water quality or other environmental conditions that are measurably worse than baseline conditions at the abandoned mine site, the Administrator shall ... require the Good Samaritan or the cooperating person ... to undertake reasonable measures ... to return surface water quality ... to the condition that existed prior to the violation."
The legislation also states the following in Section 4(n)(2)(B): Any activity not authorized by a Good Samaritan permit ... may be subject to liability and enforcement under all applicable law ...”

The proposed Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 only limits CWA and CERCLA liability for “Good Samaritans” cleaning up abandoned mine sites when in compliance with the legislation. It in no way limits application of state statutes.

Further, the proposed legislation seeks to proactively limit the potential for negligence, misuse, or abuse by:

- Limiting eligibility to projects that pose a low risk to the environment;
- Excluding any action that requires plugging, opening, or otherwise altering the portal or adit of the abandoned mine site from the definition of “remediation” for projects on State, Tribal, or private land;
- Requiring permit applications to include a demonstration that the applicant possesses or can secure financial and other resources necessary to complete the work and to address any contingencies;
- Requiring a specific contingency plan that is designed to respond to unplanned adverse events, including the sudden release of historic mine residue and notifies relevant authorities; and
- Requiring that the Good Samaritan or the cooperating person, as applicable, to undertake reasonable measures to return surface water quality or other environmental conditions to the condition that existed prior to the violation, should a violation occur.

**Question from Senator Kelly:**

3. I understand that there are a number of organizations which support the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

   a. Can you share which organizations in Arizona, and across the country, support the legislation?

Other organizations that have been confirmed by ADEQ as being in support of the Good Samaritan legislation are listed below. Please note that this is not considered to be an all-inclusive list of supporting organizations.

- Arizona Wildlife Federation (confirmed via email)
- Western Governors Association
- Trout Unlimited
- National Mining Association
- National Wildlife Federation
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• ConservAmerica
• Arizona Mining Association
• American Exploration and Mining Association
• The Nature Conservancy
• Nevada Division of Environmental Protection
• Oregon Department of Environmental Quality
• Southern Ute Indian Tribe
• Conference of Western Attorneys General
• Western States Water Council
• endeavOR New Mexico
• Over 100 additional outdoor organizations and businesses as evidenced by support packet provided by Trout Unlimited to the Senate Committee on Environment and Public Works

I have enclosed a copy of the support letters for the Good Samaritan legislation S.3571. If you have any additional questions, please call me at (602) 771-2203.

Sincerely,

[Signature]

Mikel Cabrera, P.E.
Director

Enclosures: Good Samaritan legislation S.3571 support letters
April 8, 2022

The Honorable Thomas R. Carper  
Chairman  
U.S. Senate Committee on Environment and Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Shelby Moore Capito  
Ranking Member  
U.S. Senate Committee on Environment and Public Works  
United States Senate  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Mark Kelly  
Majority Member  
U.S. Senate Committee on Environment and Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Support for the Good Samaritan Remediation of Abandoned Hardrock Mines Act and  
FY23 Abandoned Mine Reclamation Funding

Dear Chairman Carper, Ranking Member Capito, and Majority Member Kelly:

The Arizona Department of Environmental Quality (ADEQ) applauds recent federal actions that recognize the importance of addressing environmental and public safety issues associated with abandoned hardrock mines. We are writing to ask for your support on two critical and related fronts: the provision of robust funding for abandoned hardrock mine remediation in Arizona and other western states, and the advancement of S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act, which addresses liability concerns that have long stymied “Good Samaritan” efforts to remediate these sites.
Most abandoned mines in Arizona ceased operations by the 1920s. Now, they scatter the landscape, leaving behind hazardous waste, tailings, discharging adits, and open shafts (the Arizona State Mine Inspector’s Office estimates there are over 100,000 abandoned hardrock mine openings in the state).

Unlike the modern, heavily regulated mines of today, abandoned mine lands pose a risk to public safety and health and continue to degrade the natural environment. Over 120 Arizona stream miles are listed as “impaired” under the Clean Water Act for heavy metals, often associated with abandoned mines (i.e. cadmium, copper, lead, zinc). These streams feed larger watersheds that people depend on for drinking water, recreation, irrigation, and ranching, and are home to over 150 endangered or threatened species like the Mexican spotted owl and jaguar. In Arizona, abandoned mine reclamation activities are widely supported by state government partners, industry, non-governmental organizations, and private landowners.

The Infrastructure Investment and Jobs Act (IIJA) directed the Department of the Interior to establish a program to “inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land.” This proposal passed with bipartisan support in the Senate Energy and Natural Resources Committee and included a $3 billion authorization. However, to date Congress has not appropriated any funding to stand up this much-needed program and FY-23 appropriations are vital to jumpstart this initiative. Funding provided to this effort should bolster, not supplant, separate appropriations under the EPA’s Superfund program or other IIJA or Department of Interior programs.

Addressing Good Samaritans’ exposure to liability under the Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) via the pilot program proposed in S. 3571 is a critical step in allowing states and tribes to fully realize the potential benefits of the Hardrock Mine Reclamation Fund established by the IIJA. ADEQ respectfully urges you to support S. 3571 as well as robust funding appropriations for abandoned hardrock reclamation projects in the west. With national leadership, an established program, funding, and resources, the legacy of mining in Arizona and throughout the west can be one that is sustainable for future generations.

Sincerely,

[Signature]

Misael Cabrera, P.E.
Director
September 22, 2022

The Honorable Susie Lee  
United States House of Representatives  
365 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Mark Amodei  
United States House of Representatives  
104 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Steven Horsford  
United States House of Representatives  
562 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Dina Titus  
United States House of Representatives  
2464 Rayburn House Office Building  
Washington, D.C. 20515

RE: Support for Senate Bill S.3571 Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 and recommendation for matching Bill from the House of Representatives.

Dear Representative Lee, Representative Amodei, Representative Horsford, and Representative Titus:

The State of Nevada, Division of Environmental Protection (NDEP) and Division of Minerals (NDOM) applauds and supports the introduction of Senate Bill S.3571 the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. The attached letter of support to the United States Senate Committee of Environment and Public Works (EPW) from NDEP and NDOM demonstrates the importance of Senate Bill S.3571 and how it can have a positive impact on the health and safety of Nevada’s residents, wildlife, and environmental quality.

As stated in the Senate EPW letter, modern hardrock mining is fundamental to the domestic supply of critical minerals and plays a vital role in the economy especially in rural regions across
Representatives Lee, Amodei, Horsford, and Titus
September 22, 2022
Page 2 of 6

Nevada. While today’s mining is highly regulated and fully bonded, historic mining was largely unregulated and often left behind physically and environmentally hazardous sites. There are an estimated 300,000 historic mining-related features dotting the Nevada landscape alone. Starting in the 1980s, Federal and State regulations were enacted requiring new mines on federal land to be bonded to assure their complete reclamation, but remediation of legacy hardrock AML hazards never received the necessary funding and support.

In 1977, the Surface Mining Control and Reclamaion Act (SMCRA) was passed imposing a fee on coal mining to fund coal AML programs. States such as Colorado, Montana, and Utah are allowed to use some of their SMCRA funding on hardrock AML. Because Nevada has never had coal production, our AML programs have never received SMCRA funds and thus operate at a significantly smaller scale and budget, despite having the largest number of hardrock AML hazards in the United States. The latest release of the US Geological Survey USMIN dataset shows that nearly 29% of the Nation’s historic mining features are concentrated in Nevada.

Multiple Good Samaritan bills have been introduced over the past 20+ years, but they have all failed to provide the necessary Good Samaritan protection allowing for remediation of AML hazards. The lack of this certain protection contributed to cessation of a very effective AML backfill program in Nevada. The program consisted of NDOM partnering with the Nevada Mining Association (NvMA), and Bureau of Land Management (BLM). NDOM worked with the BLM to identify a suitable cluster of historic AML hazards which could be permanently closed by filling them with adjacent waste rock using a bulldozer or excavator. Members of NvMA donated the heavy equipment, transportation of the equipment, and the equipment operator. Fuel was provided by NvMA. The BLM provided the necessary surveys for National Environmental Policy Act clearance, and a BLM archaeologist supervised the entire prococess ensuring cultural features were not impacted. From 1999 to 2007, 363 features were backfilled. A change in NvMA leadership in 2007 resulted in a reassessment of potential liability and the termination of the backfill program.

Senator Heinrich’s office worked with Environmental Non-Governmental Organizations (ENGOs) such as Trout Unlimited (TU), Earthworks, and various other partners to come up with the lowest environmental risk for a Good Samaritan AML Hardrock bill ever crafted. It is a pilot bill that will have every project reviewed in detail by the Environmental Protection Agency (EPA) and if the project is located on Federal Lands, the appropriate land manager will also permit the project. Each project will be carefully evaluated to confirm all required permitting is completed, that there is no responsible party or responsible owner, and that the projects are not the subject of planned or ongoing response actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Bill does not expressly authorize new mining, but if re-processing of existing AML materials occurs, any proceeds from that processing will be available to defray costs of remediation or go back a newly established Good Samaritan Remediation Fund to support AML remediation. The approach this Bill takes will allow volunteers, counties, Tribes, and state agencies to start to reduce pollution at a scale yielding watershed-level benefits, making water quality better, not worse.
Representatives Lee, Amodei, Horsford, and Titus
September 22, 2022
Page 3 of 6

Although it is difficult to estimate the total cost of AML remediation in Nevada without having a completed inventory, the current funding of Section 40704 of the Infrastructure Investment and Jobs Act will only scratch the surface of the needs for Nevada. As stated above, conversations and even actions about various Hardrock AML Good Samaritan projects have occurred for decades in Nevada resulting in strong interest and support from industry and ENGOs. Without the necessary liability protection for these potential Good Samaritans, little to no work will be completed and these legacy hazards will continue to degrade the environment and pose risks to the public. The passage of a functional Good Samaritan Bill, like S.3571, will not only provide environmental and physical safety benefits, but also create jobs in rural and often disadvantaged communities.

The purpose of this Bill is to provide opportunities for ENGOs, State Agencies, Tribes, Communities, and Industry to cooperatively engage their expertise, knowledge, and funding to improve the environmental quality of streams and lands that are impacted by AML having no responsible party. Legal protection for Good Samaritans working to remEDIATE legacy AML features is crucial to the success of any federal hardrock mine reclamation program. We encourage and would applaud your support to become a sponsor of a Good Samaritan Bill in the United States House of Representatives to match S.3571 and protect Good Samaritans that are willing to improve the environment for all to benefit.

Sincerely,

Greg Loveno
Administrator
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources

Michael Visher
Administrator
Nevada Division of Minerals
Commission on Mineral Resources

Appendix A: History of Nevada AML programs
Appendix B: Types of Potential Nevada Good Samaritan Projects

Attachment: September 22, 2022 NDEP/NDOM Senate EPW Letter
Appendix A:

History of Nevada AML programs
The State of Nevada currently operates two Abandoned Mine Lands (AML) programs managed by separate agencies. NDOM manages the physical safety AML program while the NDEP manages the environmental AML program. Both NDEP and NDOM have their own program goals and priorities, but the overarching objective of remediating AML hazards is the same and often coordinate and work together on projects.

Nevada Division of Minerals
NDOM’s AML program was created by the Nevada Legislature in 1987 in response to incidents, both fatal and nonfatal, that had occurred at abandoned mines. The legislature placed the program within the Division and mandated two primary functions, enacted by Nevada Revised Statute (NRS) Chapter 513.

1) Establish a program to discover dangerous conditions that result from mining practices that took place at a mine that is no longer operating; identify the owner or other person responsible for the condition, if feasible; and apply a hazard ranking.

2) Develop a public awareness campaign to educate the public about dangerous conditions that exist as a result of historic mining activities.

In 1989, the Nevada Legislature expanded the program to include the responsibility of securing hazardous conditions on open public lands where no claimant or property owner could be identified. These are referred to as “orphan” abandoned mine hazards. The legislature also provided an opportunity for companies, individuals, and civic groups to voluntarily assist the program in the construction of a fence or other safeguard around a dangerous condition at an abandoned mine opening under a designated Good Samaritan law but does provide any protection for Good Samaritan to remediate an AML hazard. (NRS 41.0331)

NDOM’s AML program is funded by three sources:

1) A $4 fee collected by county recorders and remitted to the Division for every unpatented mining claim filed or retained on Federal lands.
2) A one-time fee of $20 per acre for every acre of permitted disturbance associated with new or amended mining or exploration plans of operation on public lands.
3) Assistance agreements in place with multiple partnering organizations including the Bureau of Land Management (BLM), the United States Forest Service (USFS), National Park Service (NPS), United States Army Corps of Engineers (USACE) which provide financial assistance to enhance and accelerate both field investigation activities and work performed by staff, contractors, and volunteers to secure hazards.

Since 2010, the average annual dedicated revenue for the AML program has been $863,000.

Nevada Division of Environmental Protection
The NDEP AML program is focused on mitigating potential human health and ecological concerns associated with contamination from legacy metal mining operations (inactive or abandoned mine lands) occurring primarily prior to September 1, 1989. AML sites operated
Representatives Lee, Amodei, Horsford, and Titus
September 22, 2022
Page 5 of 6

generally from the 1860's through the late-20th century on both public and private lands within
the State of Nevada. AML sites may include mills, mill tailings, acid mine drainage, waste rock
dumps, heap leach pads, pit lakes, chemical hazards, and associated structures and roads.
Nevada Administrative Code NAC 445A and Nevada Revised Statutes (NRS) 445A and
459 provide NDEP the authority to oversee assessment and corrective action on AML sites.
Mining operations active since September 1, 1989 generally fall under the purview and
regulations of the Bureau of Mining Regulation and Reclamation.

Some AML sites exist on public and/or privately-owned lands with an identified owner/operator.
On private land, the AML Program works with responsible parties or owners/operators to resolve
contamination problems and minimize human health risks and environmental hazards. For
private land with no viable owner/operator, or with a lack of funding or bonding necessary to
complete a restoration deemed necessary, the vast majority of cases, the AML Program gains
access to and assesses the site, determines a remedy, seeks and obtains funding to complete the
work, completes the necessary reclamation work, and monitors, and in some cases maintains, the
remedy to determine if the land has been restored to a stable or safe condition. On public lands,
the AML Program coordinates with the BLM and/or USFS or other public land managers to
restore lands damaged or threatened by historic mining operations.
Appendix B:
Types of Potential Nevada Good Samaritan Projects
There are significant number of potential projects in Nevada that could benefit from a Good Samaritan legislation. These include:
Water quality Good Sam projects
- Removal of tailings from streams
- Treatment of tailings receiving meteoric water runoff
- Acid Mine Drainage (AMD) treatment
- Capping of tailings/leach piles
- Management of drain down/discharge fluids
- Stormwater controls

Other Environmental Good Sam projects
- Tailings with low pH or heavy metal loading removal/impoundments
- Mercury cleanup near the Carson River Superfund Site
- Mill/smelter site removals
- Mercury retort removals
- Residential area remediation

Physical Safety Good Sam projects
- Highwall removal/recontouring
- Physical hazard closures
- Removal of mining equipment and facilities
September 22, 2022

The Honorable Thomas R. Carper
Chairman
U.S. Senate Committee on Environment and Public Works
United States Senate
419 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment and Public Works
United States Senate
455 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Support for Senate Bill S.3571 Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Dear Chairman Carper and Ranking Member Capito:

The State of Nevada, Division of Environmental Protection (NDEP) and Division of Minerals (NDOM) applaud and support the introduction of Senate Bill S.3571 the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. Modern hardrock mining is fundamental to the domestic supply of critical minerals and plays a vital role in the economy of many rural regions across the Nation. Today’s mining is highly regulated and well-bonded, while historic mining was unregulated and often left behind physically and environmentally hazardous sites. These legacy Abandoned Mine Lands (AML) hazards are found across the nation but hardrock AML hazards are particularly numerous in the western states, with an estimated 300,000 historic mining-related features dotting Nevada’s landscape alone.

Starting in the 1980s, Federal and State regulations were enacted requiring new mines on federal land to be bonded to assure their complete reclamation, but remediation of hardrock AML hazards never received the necessary funding and support.

Hardrock AML reclamation is imperative to the health of Nevada communities, wildlife, and environmental quality. Inherent lack of funding and concerns about liability protections have always hindered the cleanup of hardrock AML. Multiple Good Samaritan bills have been introduced over the past 20+ years, but they have all failed to provide the necessary Good Samaritan protection allowing for remediation of AML hazards. The additional complication of mixed land and mineral ownership and roles of multiple regulatory authorities have only added to the potential Good Samaritan AML problem.
Chairman Carper and Ranking Member Capito
September 22, 2022
Page 2 of 2

Section 40704 of the Infrastructure Investment and Jobs Act (IIJA), authorizes a new, comprehensive
AML program to address Hardrock AML. It was conceived as a $3 billion, ten-year program
implemented through states, tribes, and the federal government. An appropriation to fund this program
was left out of the IIJA. Congress appropriated $5 million in the Fiscal Year 2022 federal budget under
the Energy Communities Revitalization Program (ECRP). The House included $45 million while the
Senate included $20 million under ECRP for Fiscal Year 2023. While either funding amount is a
welcome increase over what was provided in Fiscal Year 2022, neither sum will allow much progress.
Without a significant funding increase or the guarantee of funding for more than one fiscal year at a time,
the new program makes it difficult for AML programs to increase their work on the ground. By providing
the liability protections for Good Samaritan projects, state agencies will be able to leverage IIJA 40704
funding to accomplish more remediation projects with Good Samaritan partners.

Senate Bill S.3571 is a timely and comprehensive proposal that meets the challenging requirements faced
by would-be AML Good Samaritans. The Bill offers a realistic and practical solution aimed at achieving
AML remediation through voluntary cleanups while providing liability protection on a pilot project basis.
These projects will require an entity to first qualify as a Good Samaritan and have no past or present
responsibility or ownership associated with the AML hazards being remediated. Eligible sites must have
no identifiable owner or operator who is financially capable of carrying out the needed remediation. The
legislation would authorize the Environmental Protection Agency to lead the permit application process
and determine which entities are eligible for Good Samaritan status. These projects will complement the
limited federal and state resources and demonstrate the benefits and expertise that Good Samaritans bring
to the table.

AML projects including Good Samaritan projects will not only provide environmental and physical safety
benefits, but also create jobs in rural and often disadvantaged communities. With the enormous hardrock
AML task at hand, it would be prudent to provide liability protection for Good Samaritans that are willing
to improve the environment for all to benefit.

Sincerely,

Greg Lovato
Administrator
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources

Michael Visher
Administrator
Nevada Division of Minerals
Commission on Mineral Resources
September 19, 2022

The Honorable Jeff Merkley
United States Senate
531 Hart Senate Office Building
Washington D.C. 20510

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 3571 - Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Dear Senator Merkley and Senator Wyden:

Oregon has approximately 5,000 abandoned mine land (AML) features (e.g., adits, waste piles, structures, test pits), many of which have had very little investigation. These include physical hazards and other environmental hazards both on-site and further downstream within watersheds and are located on both private property and federal lands. Oregon Department of Environmental Quality (ODEQ), the U.S. Forest Service and the U.S. Bureau of Land Management have addressed a portion of these mine features, but many remain. Abandoned mines have and continue to impact Oregon’s watershed health with acid mine drainage and pollution by heavy metals threatening both ecological receptors and public health.

S. 3571 (Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022) if enacted, would establish a seven-year pilot permitting program for 15 Good Samaritan remediation AML projects on federal, state, tribal, and private lands in the western states. The permit process includes a certification process for the Good Samaritan organizations wanting to conduct assessment and cleanup, and includes federal, state, or tribal involvement and oversight. Oregon has several AML projects that would be good candidates for this pilot program. In addition, ODEQ, as well as other Oregon state natural resources agencies, have long-standing collaborative relationships with many watershed restoration and conservation organizations.

S.3571 proposes to eliminate liability exposure under the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for certified Good Samaritan organizations. Liability exposure is the main reason many conservation organizations are hesitant or unwilling to conduct watershed restoration if the work is associated with impacts from abandoned mines. If successful, the pilot program would lead the way for additional sites to be addressed with the support of Good Samaritan organizations.

The Infrastructure Investment and Jobs Act (IIJA) directed the Department of the Interior to establish a program to “inventory, assess, decommision, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land.” This program includes a $3 billion authorization, as well as a requirement that 50% of funding be made available in the form of grants to state and tribes. More funding is needed, but the additional funding will be a much-needed increase to support AML assessments, investigations, and cleanup.
Addressing Good Samaritans’ exposure to liability under the CWA and CERCLA via the pilot program proposed in S. 3571 would support federal agencies, states, and tribes to realize the potential benefits of the Hardrock Mine Reclamation Program Fund established by the IIJA.

Sincerely,

Shannon Davis
Eastern Region Division Administrator
Oregon Department of Environmental Quality

Cc: The Honorable Thomas R. Carper
Chairman
U.S. Senate Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington D.C. 20510
July 26, 2022

Hon. Michael Bennet  
United States Senate  
261 Russell Senate Building  
Washington, D.C. 20510

Hon. John Hickenlooper  
United States Senate  
Russell Senate Office Building  
2 Constitution Ave NE  
Suite SR-374  
Washington, D.C. 20510

Re: Support for the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Dear Senators Bennet and Hickenlooper:

The Southern Ute Indian Tribe supports the “Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022” (S.3571), a thoughtful bill to establish a Good Samaritan pilot permitting program to alleviate damages caused by low-risk abandoned mines. As you know, in our region, the Animas and San Juan watersheds are affected by legacy mine waste, with several creeks and river segments experiencing high levels of heavy metals, high acidity, and low biodiversity due to the abundance of abandoned mines.

The Bonita Peak Mining District (BPMD), within the Upper Animas River watershed, was added to the Superfund’s National Priority List in 2016. The BPMD consists of 48 historic mines that the U.S. Environmental Protection Agency (EPA) is actively working to remediate. The problem with this approach is the Superfund designation only targets high-risk mines. As a result, low-risk mines in the area continue to release contaminants into the watershed, without a planned cleanup strategy in sight.

The Tribe supports S.3571 because current law discourages local conservation organizations, watershed groups and state agencies from remediating low-risk mines due to severe risks of significant liability. Under current law, despite improving water quality, a Good Samaritan can be considered polluters themselves if a mine is not fully remediated to standards established under the Clean Water Act (CWA). A discharge permitting program authorized and operated with direct oversight from the EPA for qualified Good Samaritans and eligible projects that are subject to National Environmental Policy Act (NEPA) and public approval, would provide liability protections for local and state organizations to target neglected low risk mine sites.

P.O. Box 737  Ignacio, CO 81137  Phone: 970-563-0100
In addition to establishing a new permitting program to be administered by the EPA, the bill would establish a Good Samaritan Mine Remediation Fund for land management agencies that authorize Good Samaritans engaged in remediation activities on Federal lands.

In conclusion, the Tribe supports the Good Samaritan mine remediation legislation that will increase protection of our waters, land, and people from the negative effects of historic mine pollution.

Thank you for your consideration of this letter and your strong support for the Tribe.

Sincerely,

Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council

cc  Hon. Tom Carper
Chairman
Committee on Environment and Public Works

Hon. Shelley Moore-Capito
Ranking Member
Committee on Environment and Public Works
March 17, 2022

The Honorable Martin Heinrich
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

The Honorable James Risch
United States Senate
408 Russell Senate Office Building
Washington, DC 20510

Dear Senator Heinrich and Senator Risch:

Western Governors applaud the introduction of S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act, and are encouraged by the bipartisan support it has attracted to date. Hardrock mine reclamation is vitally important to the health of western communities and ecosystems, and the pilot program proposed in your bill would help advance essential legal protections for Good Samaritans seeking to cleanup abandoned mine sites. By addressing Good Samaritans’ exposure to Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act liabilities, the proposed pilot program has the potential to fully unlock the power of the Hardrock Mine Reclamation Fund established by the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

Western Governors have supported the creation of legal protections for Good Samaritans since at least 1995. Western Governors’ Association (WGA) Policy Resolution 2021-09, Cleaning Up Abandoned Hardrock Mines in the West (attached), specifically calls for the type of pilot program this legislation would create. The program will help pave the way for a comprehensive and permanent mechanism to address the 22,500 mines that the Government Accountability Office deems hazardous to the environment.

Western Governors support the general design of the proposed program, but believe improvements are necessary in one area. The legislation would authorize the Environmental Protection Agency to lead the permit application process and determine which entities are eligible for Good Samaritan status. Western Governors believe that individual states are best suited to determine Good Samaritan eligibility and that states should be allowed to review and determine the adequacy of Good Samaritan reclamation plans. This principle is outlined in Policy Resolution 2021-09.

We appreciate your bipartisan efforts to address liability concerns for Good Samaritans and accelerate the pace of mine reclamation. We look forward to working with you as the Good Samaritan Remediation of Abandoned Hardrock Mines Act moves through the legislative process.

Sincerely,

Brad Little
Governor of Idaho
Chair, WGA

Jared Polis
Governor of Colorado
Vice Chair, WGA

Attachment
Policy Resolution 2021-09
Cleaning Up Abandoned Hardrock Mines in the West

A. BACKGROUND

1. Hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper. As part of this past, the West contains historically mined and abandoned hardrock mines, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the cleanup and reclamation.

2. The cleanup of abandoned hardrock mines is hampered by two issues – lack of funding and concerns about liability. These issues are compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site.

3. There are numerous economic, environmental, and social benefits from remediating lands and waters impaired by abandoned hardrock mines. In recognition of these benefits, states, municipalities, federal agencies, volunteer citizen groups, and private parties have engaged in or are interested in voluntarily cleaning up abandoned mines. Parties who voluntarily engage in abandoned mine cleanup, but have no liability or responsibility requiring them to clean up the abandoned mine, are referred to in this resolution as Good Samaritans. However, questions of liability stemming from this voluntary cleanup have stymied many of these efforts.

4. Good Samaritans currently have potential liability for their voluntary cleanup under Sections 301 and 402 of the Clean Water Act (CWA), because they can inherit liability for any discharges from an abandoned mine. In addition, Good Samaritans have potential liability for their voluntary cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).

5. Good Samaritans are exposed to these liability risks despite the fact that they did not previously operate or own the mine; they would voluntarily bear the costs of the cleanup; and they could provide numerous benefits if they were able to remediate the abandoned mine, such as improving water quality, facilitating beneficial land use, and securing the site.

6. Liability concerns also prevent mining companies from remining or voluntarily cleaning up abandoned mines. While remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for voluntary efforts.

7. In many western states, abandoned hardrock mine cleanup projects on public lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs. Allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.
8. On March 5, 2020, the U.S. Government Accountability Office (GAO) published its report, Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors that Limit Efforts to Address Hazards (GAO-20-238). Bureau of Land Management officials estimated that with the agency’s current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database.

9. Because of safety and environmental concerns, the majority of abandoned hardrock mine sites remain idle without any type of reuse. The U.S. Environmental Protection Agency has identified developing solar projects on abandoned hardrock mine sites as an innovative solution to generate energy and return abandoned mine lands to productivity while considering economic, environmental and social effects.

B. GOVERNORS’ POLICY STATEMENT

1. Western Governors call on Congress to legally protect Good Samaritans who clean up abandoned mines, including local and state government agencies, from becoming legally responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.

2. Western Governors call on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA and RCRA liabilities for Good Samaritans. The federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental, the mining industry) from improving conditions at abandoned mines.

3. As the costs to clean up abandoned hardrock mines are significant, Western Governors support efforts by Congress and the Administration that would facilitate cleanups by Good Samaritans. To this end, the requirements for Good Samaritan project approvals and reviews should not deter cleanups, while still ensuring there are significant measurable environmental gains from the project. Governors would also support legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.

4. Many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. These states are best suited to determine which entities are eligible for Good Samaritan status and to review and determine the adequacy of Good Samaritan reclamation plans.

5. Federal land managers and state officials that responded to the March 5, 2020 GAO Report consistently expressed that their backlog of work on these mines far exceeds their current staff and budget levels. Western Governors support increased federal funding and workforce capacity dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs.
6. Western Governors support legislation to clarify and, where possible, minimize liabilities associated with developing abandoned hardrock mine sites with solar arrays and other reuse projects with beneficial economic, environmental, and social effects.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in June 2024. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult http://www.westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.
September 19, 2022

The Honorable Tom Carper  
Chairman, Senate Environment and Public Works Committee  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Shelley Moore Capito  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: S.3571 - Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Dear Chairman Carper and Ranking Member Capito:

The Conference of Western Attorneys General (“CWAG”) request your support for Senate Bill 3571 titled the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022, introduced by New Mexico Senator Martin Heinrich in February 2022 (the “Bill”). Tens of thousands of abandoned mines pollute an estimated 40% of headwaters in the Western United States. The current, existing legal framework deters would-be “Good Samaritan” entities, i.e., those who are not responsible for the pollution but want to help remediate it, from conducting voluntary cleanups at these abandoned mine sites. This stand-alone Bill effectively eliminates legal barriers and incentivizes Good Samaritan cleanups through a new permitting program administered by the U.S. Environmental Protection Agency (“EPA”) and federal land management agencies.

The greatest legal barrier to Good Samaritans stems from the federal Clean Water Act, 33 U.S.C.A. § 1251, et seq. (“CWA”). Section 402 of the CWA applies stringent regulatory standards through a prescriptive permitting process for any cleanup project seeking to improve water quality of discharges from a discrete source such
as a mine portal. Good Samaritan projects have limited budgets and lack the resources needed to meet these requirements. Even good faith attempts to improve water quality that do not meet these stringent “point source” discharge standards can lead to substantial liability for a Good Samaritan.

The Bill offers a practical solution aimed at achieving incremental water quality improvements through voluntary cleanups to complement limited federal and state resources. An entity must first qualify as a “Good Samaritan” by having no past or present ownership of the abandoned mine or any liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 et seq. (“CERCLA”, a/k/a “superfund”). Eligible sites must have no identifiable owner or operator who is financially capable of carrying out the needed remediation.

Section 4 of the Bill establishes a pilot program authorizing EPA and federal land management agencies to collectively issue up to fifteen (15) Good Samaritan permits over a seven (7) year period. Unlike previous iterations, the Bill requires Good Samaritans to first document baseline conditions to help measure environmental quality improvements to affected media. Good Samaritans must also submit detailed remediation plans with sound engineering designs and adequate plans for operations, monitoring and maintenance. This Bill also ensures public involvement by deeming permit decisions “major federal actions” requiring preparation of Environmental Assessments under the National Environmental Policy Act, 42 U.S.C.A § 4321 et seq. (“NEPA”), subject to public review and comment.

Once issued, a Good Samaritan permit serves in lieu of a CWA discharge permit. Good Samaritans are exempt from CWA and CERCLA liability so long as they comply with the terms of their permit. Unlike past versions, the Bill safeguards against degradation by removing liability protections if the project results in measurable adverse impacts to water quality or other environmental conditions that cannot be returned to baseline.

Overall, the Bill strikes a balance between incentivizing voluntary cleanups and protecting against further environmental harm – something that has eluded previous lawmakers in the fourteen (14) Good Samaritan bills introduced since 1999. As testament to this accomplishment, the Bill has garnered broad support from state and local governments, sportsman groups, the mining industry, conservation organizations, and regional governmental associations, including the Western Governors’ Association and Western States Water Council.
The Conference of Western Attorneys General urge you to vote in favor of the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 to help address the long-standing problem of abandoned mines impacting our natural environment.

Sincerely,

Karen White
Executive Director
Conference of Western Attorneys General
July 28, 2022

The Honorable Martin Heinrich  
United States Senate  
303 Hart Senate Office Building  
Washington, DC 20510

The Honorable James Risch  
United States Senate  
SR-483 Russell Senate Office Building  
Washington, DC 20510

RE: Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571)

Dear Senator Heinrich and Senator Risch,

As you know, the West contains numerous historical abandoned hardrock mines on public and private lands. Many of these abandoned mines pose ongoing environmental problems and physical hazards, including adverse impacts to water quality, which are affecting drinking water supplies, aquatic life, recreational uses, agriculture, and livestock. Despite efforts from federal and state agencies, and private partners, progress on this issue has been slow and expensive.

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

As noted in the attached policy position #477, Abandoned Hardrock Mine Cleanup (Sept 2021), our member states are supportive of legislation and new funding to address the various factors that have hindered the ability of states, tribes, and federal agencies to address the monumental task of cleaning up abandoned hardrock mines including: (1) the absence of solvent responsible parties; (2) inadequate funding and resources at all levels of government; (3) the inability of interested third parties to act as voluntary Good Samaritans without incurring the risk of severe liability penalties; and (4) the backlog of inventory efforts to identify the location of and environmental hazards related to abandoned mines and properly prioritize the sites to maximize the benefit of remediation projects.

WSWC supports your efforts to advance the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022\(^1\) (hereafter the 2022 Good Samaritan bill). The 2022 Good Samaritan bill builds on previous legislation introduced over the course of the past 15 years and addresses many of the concerns that have been raised by states and others in testimony during previous legislative hearings on this topic including:

- Enabling mining companies, with no prior responsibility for an abandoned mine, to act as Good Samaritans with a mechanism to use the profits associated with the re-mining of material to support

\(^1\) Good Samaritan Remediation of Abandoned Hardrock Mines Act, S. 3571, 117th Congress (2022).
further remediation, which would effectively open opportunities for some of the most qualified and best placed Good Samaritans to complete projects.  

• Defining the term measurable progress to allow for partial remediation, striking the right balance of ensuring projects make meaningful improvements to the environment while respecting resource constraints.  

• Extending liability protection to state, tribal, and private land, rather than just federal land, as a significant improvement in scope.  

• Addressing liability risk associated with both the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act.  

• Recognizing previous concerns about public process through the public comment requirements of the newly established permitting program.  

• Clearly including States as potential Good Samaritan applicants based on the definition of person as referenced in both the Clean Water Act and the CERCLA.

WSWC believes that strong partnerships with states will increase the success of a Good Samaritan program. States play a critical role in identifying appropriate sites and actors for Good Samaritan clean-ups and evaluating proposed remediation plans. Abandoned mine remediation efforts must comply with both federal and state laws (e.g. ground water quality requirements, and state-specific hardrock mining regulations) and state agencies are best placed to oversee and ensure project compliance with all requirements. Western states are eager to partner with federal agencies in implementing the Good Samaritan bill especially considering the potential for new funding to be made available through the Infrastructure Investments and Jobs Act (IIJA). WSWC has identified the following ways in which the 2022 Good Samaritan bill could provide more opportunities for partnership between federal agencies and states.

First, WSWC recommends that a formal consultation process with states be established as part of the EPA pilot program that ensures that state agencies have an opportunity to shape the program selection criteria and process for permit issuance and oversight. The 2022 Good Samaritan bill requires EPA to consult with state agencies that have an interest in the issuance of a permit in some cases. As co-regulators, consultation with states, and in some cases adjacent states, should not occur only at the end of the process as part of permit issuance and should include all activities within the state.

Second, States, in addition to federal agencies, should be protected from liability risk. The 2022 Good Samaritan bill explicitly provides liability protection for the United States and federal agencies from CERCLA and CWA. States should be included in both paragraph 4 and 5 of Section 3.

Upon successful implementation of the pilot program, WSWC encourages Congress to include additional elements in a permanent Good Samaritan program. First, we suggest that Congress consider providing states that have existing Clean Water Act authority with the ability to administer Good Samaritan permits under a permanent program structure. A state-led permitting program, with oversight from EPA, follows the same model as other delegated federal environmental programs, and provides the best opportunity to achieve optimal environmental outcomes. Second, WSWC suggests that Congress consider allowing more

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2 Id. at § 4(f)(5)(B).  
3 Id. at § 4(m)(1)(A)(v)(D).  
4 Id. at § 4(b)(19)(C).  
5 Id. at § 2085(A)(B).  
6 Id. at § 4(m)(1)(A).  
7 Id. at § 4(c)(2)(B).  
8 Id. at § 2(11).  
flexibility with respect to maintenance commitments under a permanent program. Although WSWC appreciates the efforts to ensure that Good Samaritan permittees have the financial resources for the operation and maintenance of remediation activities, we caution that requiring applicants to commit to perpetual, long-term maintenance and operation could discourage projects that may otherwise have a measurable benefit and are supported or led by states. Flexibility could be appropriate for some projects and should be allowed subject to approval by the permitting authority.

WSWC also has several suggestions regarding funding of abandoned hardrock mine clean-ups. First, our member states recommend that the 2022 Good Samaritan bill provide flexibility for states, when acting as a Good Samaritan, to implement creative approaches to finance remediation such as the use of Supplemental Environmental Project funds obtained through settlements of Clean Water Act violations. Second, the inclusion of abandoned mine reclamation needs in the IIJA provides an opportunity to make substantial progress on these issues. Although $3 billion was authorized, Congress has not yet appropriated any funds for this section. As you may know, Congress appropriated funds for clean-up of abandoned coal mines. We encourage you to seek an appropriation to fund abandoned hardrock mine remediation activities led by both states and federal agencies.

Passage of the 2022 Good Samaritan bill in combination with an appropriation for abandoned hardrock mines associated with the IIJA would allow federal agencies, in partnership with states, to make substantive progress on this critical but seemingly intractable issue. Many western states are interested in leading clean-ups of abandoned mine sites especially with the potential for new appropriations to states through the IIJA. However, states also need Good Samaritan liability protection to move forward with these projects.

WSWC would welcome an opportunity to discuss how states can best collaborate with Congress and federal agencies to finalize the 2022 Good Samaritan bill and develop the programming and prioritize the funding allocated toward abandoned hardrock mine remediation. We have recently reached out directly to the Department of Interior, the Department of Agriculture, and the Environmental Protection Agency to further these goals (see attached letter).

We thank you for your leadership on this issue and stand ready to assist with next steps in the Congressional process.

Sincerely,

Tony Willardson
Executive Director

cc to cosponsors

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11 Infrastructure Investment and Jobs Act, Division D, Title VII § 40704 (2021).
12 Id. § 40704 (c)
13 Id at Division J, Title VI
WESTERN STATES WATER COUNCIL
682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559
Web Page: www.westernstateswater.org

July 28, 2022

Secretary Deb Haaland
U.S. Department of the Interior
deh@ios.doi.gov

Secretary Tom Vilsack
U.S. Department of Agriculture
tom.vilsack@osec.usda.gov

Administrator Michael Regan
U.S. Environmental Protection Agency
regan.michael@epa.gov

RE: State-Federal Collaboration on the Cleanup of Abandoned Hardrock Mines

Dear Secretaries Haaland and Vilsack and Administrator Regan,

The West contains numerous historical abandoned hardrock mines on public and private lands. A significant portion of them are located on state and tribal lands, as well as lands managed by the U.S. Forest Service (USFS) and the U.S. Bureau of Land Management (BLM). Many of these abandoned mines pose ongoing environmental problems and physical hazards, including adverse impacts to water quality, contributing to Clean Water Act §303(d) impaired waters. These water quality impairments can be severe, affecting drinking water supplies, aquatic life, recreational uses, agriculture, and livestock.

Various factors have hindered the ability of states, tribes, and federal agencies to address the monumental task of cleaning up abandoned hardrock mines including: (1) the absence of solvent responsible parties; (2) inadequate funding and resources at all levels of government; (3) the inability of interested third parties to act as voluntary Good Samaritans without incurring the risk of severe liability penalties; and (4) the backlog of inventory efforts to identify the locations and environmental hazards of abandoned mines and properly prioritize the sites to maximize the benefit of any remediation projects.

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

As noted in the attached policy position, our member states have expressed an interest in: (1) collaborating with the federal agencies to pool resources; (2) identifying pilot projects to demonstrate ways that collaboration might more effectively resolve ongoing hazards; and (3) exploring new ideas for prioritizing sites and moving projects forward.

The WSWC supports the efforts of the Administration under Executive Order 14008. The WSWC also supports future efforts by the Environmental Protection Agency’s Office of Mountains, Deserts, and Plains to
advance and resolve states’ priority abandoned mine issues with an “all-hands” approach to finding creative solutions. WSWC members would appreciate an update on the status and activities of this office.

The inclusion of abandoned mine land (AML) reclamation needs in the Infrastructure Investment and Jobs Act (IIJA) provides opportunities to advance these issues. WSWC would welcome an opportunity to discuss how states can best collaborate with federal agencies to develop the programming and prioritize the funds allocated toward abandoned mine issues. Specifically, WSWC members are interested in engaging with the program to be established by the Secretary of the Interior in section 40704 of the IIJA to “inventory, assess... and remediate abandoned hardrock mine land.” States are in the best position to assist the Department of Interior in prioritizing these activities, and in many cases implementing remediation projects, in accordance with the criteria set out in the same section.

Further, the Ecosystem Restoration programming outlined in section 40804 of the IIJA includes authorization and appropriation for activities that “mitigate environmental hazards on mined lands.” States would like the opportunity to assist both the USFS and the BLM in identifying priority abandoned mine sites that would benefit from these new funding opportunities. Specifically, we encourage both agencies to consider water quality impacts to both surface water and ground water from abandoned mines in prioritizing these funds and to consider partnering with states in implementing remediation projects.

Finally, recognizing the Nation’s need for critical minerals, many of which may be found in abandoned mine tailings and waste rock, we urge the USGS to partner with states, EPA, and federal land management agencies as part of the National Cooperative Geologic Mapping Program tasked, in section 40202 of the IIJA, with identifying “abandoned mine land and other land containing mine waste where multiple critical mineral... and metal commodities are anticipated to be present.” Specifically, there is an opportunity to collaboratively identify sites that offer both the potential for re-mining critical minerals and remediating water quality impairments.

WSWC appreciates DOI’s recently released draft guidance on funding for AML activities associated with coal mining, especially the opportunity for states and other stakeholders to provide input on priorities and process. WSWC would appreciate a similar approach to other aspects of abandoned mine cleanup activities associated with other aspects of the IIJA.

We invite you to encourage the federal agencies under your jurisdiction to engage in ongoing dialogue with our states to consider how to accomplish our mutual goals, and propose the use of the WSWC and the Western Federal Agency Support Team (WestFAST) to facilitate those opportunities as appropriate. Specifically, we would welcome you and your colleagues to join us for a dialogue on these issues at our fall meeting in Oklahoma, October 19-21.

Sincerely,

Tony Willardson
Executive Director
RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
Abandoned Hardrock Mine Cleanup
Deadwood, South Dakota
September 16, 2021

WHEREAS, the General Mining Act of 1872 allowed individuals to obtain exclusive rights to valuable hardrock mineral deposits on land belonging to the United States without requirements to reclaim the land until the 1970s; and

WHEREAS, hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper; and

WHEREAS, as part of this past, the West contains historically mined and abandoned hardrock mines on public and private land, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the needed cleanup and reclamation; and

WHEREAS, a recent report from the Government Accountability Office (GAO-20-238) found that the United States has at least 140,000 abandoned hardrock mine features on federal land of which 22,500 pose or may pose environmental hazards, including adverse effects to water quality; and

WHEREAS, most of these sites are in many western states with a significant portion located wholly or partially on public land managed by the U.S. Forest Service or the U.S. Bureau of Land Management; and

WHEREAS, significant hardrock mining has also occurred on tribal lands; and

WHEREAS, there could be more than 390,000 additional abandoned hardrock mine features on federal land that have not yet been characterized; and

WHEREAS, many of the abandoned hardrock mines are co-located on public and private land; therefore, consideration should be given to the private land component as well when assessing full mine site cleanup; and

WHEREAS, many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate impacted waters, and implement abandoned mine programs that are used to identify state-specific priorities with respect to abandoned hardrock mining issues; and

WHEREAS, there are numerous economic, environmental, and social benefits from remediating and reclaiming lands and waters impaired by abandoned hardrock mines; and

WHEREAS, water quality impacts can be severe, with water quality conditions resulting in impacts to drinking water supplies, aquatic life, recreational uses, agriculture and livestock; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) has identified developing alternative industrial development projects that are bonded for future cleanup on abandoned hardrock mine sites as an innovative solution to generate benefits and return abandoned mine lands to productivity while considering economic, environmental and social effects; and
WHEREAS, establishing a productive post-mining land use is an important safety and quality of life issue for states, especially where abandoned hardrock mine sites exist with encroaching development, have an increased prevalence of outdoor recreation opportunities such as off highway vehicle usage, or where the sites can meet the growing demand for renewable energy development and storage; and

WHEREAS, the cleanup of abandoned hardrock mines is hampered by two issues – (1) insufficient state and federal resources and (2) concerns about liability, compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site; and

WHEREAS, Bureau of Land Management officials estimated that with the agency’s current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database (GAO-20-228); and

WHEREAS, states, tribes, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility for the sites (referred to as Good Samaritans in this resolution) have engaged in or are interested in voluntary restoration work at abandoned hardrock mines; and

WHEREAS, Good Samaritans currently have potential liability for their voluntary cleanup under the Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) despite the fact that they did not previously operate or own the mine. Such Good Samaritans have expressed interest in voluntarily bearing the costs of the cleanup, and they could provide numerous benefits if they were able to remediate the abandoned mine, but are dissuaded by liability concerns; and

WHEREAS, liability concerns also prevent other active modern mining companies from re-mining or voluntarily cleaning up abandoned mines; and

WHEREAS, “Good Samaritan” bills have been introduced in Congress over the years to protect nonliable entities that are willing to voluntarily clean up these sites from legal liability under CERCLA and CWA; and

WHEREAS, in 2020 the EPA created a new office, the Office of Mountains, Deserts, and Plains, to promote Good Samaritan cleanup efforts and foster partnerships with states, tribes, local communities and other stakeholders to ensure more efficient cleanup of both Superfund and non-Superfund sites in the West, including abandoned mines; and

WHEREAS, in many western states, abandoned hardrock mine cleanup projects on public and private lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs if sufficient funding were available, and allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council (WSWC) supports increased federal funding and workforce resources dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs, with a priority on those sites that are contributing to CWA 303(d) impaired waters or have been otherwise prioritized by states.

BE IT FURTHER RESOLVED, that increased federal funding appropriated by Congress should not be used to offset or otherwise reduce existing resources allocated to states to work on abandoned hardrock mine issues and should be delivered to state and federal agencies through a clear, transparent, and efficient manner that maximizes project implementation work at sites prioritized by states.
BE IT FURTHER RESOLVED that the WSWC supports a rapid and extensive inventory and characterization of environmental hazards and impacts, including water quality, caused by abandoned hardrock mines on federal, state, tribal, and private land across western states and working collaboratively with states and tribes, relying on their expertise to prioritize sites for cleanup.

BE IT FURTHER RESOLVED that the WSWC supports efforts by the EPA Office of Mountains, Deserts, and Plains to advance and resolve states’ priority abandoned mine issues by helping states to leverage federal programs and enhance collaboration across federal agencies, states, regional, local, non-profit, and private partnerships to create an “all-hands” approach to finding creative solutions, including mining actions identified in EO 14017, for the cleanup of abandoned hardrock mine sites and to accelerate remedial efforts using the most advanced technology solutions.

BE IT FURTHER RESOLVED that the WSWC supports exploration of new ideas for moving projects forward, such as using Brownfields’ Bona Fide Prospective Purchaser protections or other methods of promoting liability protections until such time that a Good Samaritan program can be established.

BE IT FURTHER RESOLVED that the WSWC supports legislation to amend the Clean Water Act to protect Good Samaritans and States from inheriting perpetual liability for the site and to include flexibility and mechanisms for States to implement creative approaches to remediation (e.g., use of Supplemental Environmental Projects obtained through settlements).

BE IT FURTHER RESOLVED, the WSWC supports legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.

BE IT FURTHER RESOLVED, the WSWC calls on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA, CWA and RCRA liabilities for Good Samaritans, while the federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental entities, and the mining industry) from improving conditions at abandoned mines.
August 10, 2022

The Honorable Tom Carper, Chairman  The Honorable Shelly Moore Capito, Ranking Member
Environment and Public Works Committee  Environment and Public Works Committee
United States Senate  United States Senate
Washington, DC 20510  Washington, DC 20510

RE: Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571)

Dear Chairman Carper and Ranking Member Capito,

We recently sent a letter supporting S. 3571, the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act, to the sponsors of the legislation (attached). We are writing to encourage the Environment and Public Works Committee to hold a hearing on this legislation as soon as possible.

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

The West contains numerous historical abandoned hardrock mines on public and private lands that pose ongoing environmental and physical hazards, including adverse impacts to water quality. Passage of S.3571, in combination with an appropriation for abandoned hardrock mines associated with the Infrastructure Investment and Jobs Act (IIJA), would provide for substantive progress on this critical but seemingly intractable issue.

Our member states stand ready to work with Congress towards enactment of S. 3571, to partner with the Environmental Protection Agency to implement the pilot program across state and federal lands, and assist federal agencies to prioritize funding for abandoned hardrock mine remediation.

Sincerely,

Tony Willardson
Executive Director

Attachment
Dear Senator Heinrich,

Clean water is essential for America’s booming outdoor recreation (OR) economy which supports over $887 billion of consumer spending and 5.2 million jobs. The OR industry is here to stay and will continue to sustain communities across the country.

Everything from commercial river recreation to rafting, kayaking, to wildlife viewing, hunting, fishing and more depend on the clean waters that course through streams and rivers, and fill wetlands and lakes. Unfortunately, many miles of those waterways are impaired by pollution from abandoned mines. We urge your support for Good Samaritan legislation that would speed up restoration of America’s waterways degraded by abandoned mine pollution.

While the Federal government can use a Superfund action to clean up some of these abandoned mines, Superfund only addresses the worst cases while hundreds of smaller abandoned mines leak toxic pollutants every day. State agencies, county governments, conservation organizations and watershed groups want to tackle smaller cleanup efforts. However, under federal law, these Good Samaritans who have no legal responsibility or connection to an abandoned mine are deterred from cleaning them up to at least some extent due to the immense liability risks and onerous standards.

Mitigation of this issue can begin with passing legislation providing bona fide Good Samaritans liability protections while at the same time hold them accountable to terms of their permits. Abandoned mines are an issue, but Good Samaritan legislation will allow qualified groups to help tackle work desperately needed across the U.S.

endeavor New Mexico fully supports Good Samaritan legislation and we urge you to continue your efforts to pass this legislation in the 117th Congress.

Sincerely,

James Glover
Co-Director
endeavor New Mexico
August 25, 2022

Honorable Martin Heinrich
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

Honorable James Risch
United States Senate
483 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Heinrich and Senator Risch:

Clean water is essential for America’s booming outdoor recreation economy. Supporting over $887 billion in consumer spending and 5.2 million jobs, this industry is here to stay and will continue to support communities across the country.

Everything from commercial river recreation to rafting, kayaking, wildlife viewing, hunting, fishing and more, depend on the cold, clean waters that course through our streams and rivers, and fill our wetlands and lakes. Unfortunately, many miles of those waterways are impaired by pollution from abandoned mines. We write to you today in support of Good Samaritan legislation that would speed up restoration of America’s waterways degraded by abandoned mine pollution.

Over 110,000 stream miles in the U.S. are listed as impaired due to heavy metal concentrations and/or high acidity, with mine pollution being a significant contributing factor. Moreover, there are hundreds of thousands abandoned mines throughout the western United States, an estimated 33,000 of which are degrading the environment, including contaminating surface and groundwater.

While the Federal government can use a Superfund action to clean up some of these abandoned mines, Superfund only addresses the worst cases while hundreds of smaller abandoned mines bleed toxic pollutants every day. State agencies, county governments, conservation organizations and watershed groups want to tackle smaller cleanup efforts. However, under federal law, those who have no legal responsibility or connection to an abandoned mine – Good Samaritans – are deterred from cleaning up these messes due to the immense liability risks and onerous standards.

In most cases, these cleanups will greatly improve water quality, but meeting high EPA water quality standards may not be feasible nor cost effective, leaving the Good Samaritan on the hook, forever, for any remaining pollution. In short, the law does not distinguish between those who cause pollution and those who want to clean it up. The result is that these leaking abandoned mines continue to degrade our water, day after day, year after year.

We can solve this conundrum by passing legislation that provides bona fide Good Samaritans liability protections while also holding them accountable to terms of their permits. Abandoned mines are a big problem, but Good Samaritan legislation will allow qualified groups to help tackle work desperately needed across the United States.

The undersigned outdoor recreation businesses and associations fully support S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. We thank you for your leadership and urge you to double down on efforts to pass this vital legislation in the 117th Congress.

Sincerely,

Outdoor Alliance
Washington, D.C.

Simms Fishing Products
Bozeman, MT

American Fly Fishing Trade Association (AFFTA)
Bozeman, MT

Northwestern River Supply (NRS)
Moscow, ID

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Steamtech Boats          Last Exit Goods
Boise, ID               Steamboat Springs, CO

Waterworks – Lancson     Wingo Outdoors
Boise, ID               North Adams, MA

Dun Magazine            The Reel Life
Dover, TN                Santa Fe, NM

Yellow Dog Flyfishing Adventures Seek Outside
Bozeman, MT              Grand Junction, CO

AFFTA Fisheries Fund     Moldy Chum
Bozeman, MT              Seattle, WA

Vedavoo                  Aire Boats
Leominster, MA           Meridian, ID

Adipose Boatworks        Outcast Sporting Gear
Helena, MT               Meridian, ID

Tight Line Media         First Lite
Idaho Falls, ID          Ketchum, ID

Wide Angle Art           Elko Fly Shop
St. George, UT           Elko, NV

Tactical Fly Fisher      Cheeky Fishing
Springville, UT          North Adams, MA

Fishwest                 
Kamas, UT

CC:
Senator Tom Carper, Chairman, U.S. Senate Committee on Environment and Public Works
Senator Shelley Capito, Ranking Member, U.S. Senate Committee on Environment and Public Works
August 23, 2022

The Honorable Tom Carper
Chair
U.S. Senate Committee on Environment and Public Works

The Honorable Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment and Public Works

Dear Chair Carper and Ranking Member Capito,

The undersigned hunting, fishing and conservation organizations write on behalf of millions of hunters, anglers and outdoor enthusiasts to request that you move swiftly to hold a hearing on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

This bipartisan legislation introduced by Senators Martin Heinrich and James Risch would help address some of the estimated 33,000 polluting abandoned mine sites where there is no party responsible for the cleanup. Toxic pollution at these sites compromises water quality, degrades fish and wildlife habitat, and poses dangers for outdoor recreationists. Restoring the productivity of these sites will not only improve the health of downstream fisheries, but also regenerate wildlife habitat on de-vegetated abandoned mine lands. With tens of thousands of abandoned mines sites throughout the West in need of remediation, there is a tremendous opportunity for cleanups to have positive impacts on fish and wildlife, hunting and fishing and local job creation.

State agencies and private groups who have no legal responsibility or connection to these abandoned mining projects – true Good Samaritans – want to help tackle some of these cleanup projects. Unfortunately, under federal law, Good Samaritans are treated as if they are polluters themselves, posing significant liability risks that deter numerous would-be cleanups.

S. 3571 would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. Additionally, the bill specifies that mining activities are strictly prohibited. Lastly, if a permit violation causes an uncorrected worsening of environmental conditions, all liability protections would be voided.

By passing the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022, Congress can unite the hands of volunteers who want to help tackle this enormous problem, improving the health of fish and wildlife habitat and communities throughout the country. We respectfully urge you to swiftly take up this much-needed legislation.

Sincerely,

American Sportfishing Association
American Woodcock Society
Archery Trade Association
Backcountry Hunters & Anglers
Bass Anglers Sportsman Society (B.A.S.S)
Boone and Crockett Club
Camp Fire Club of America
Congressional Sportsmen’s Foundation
Council to Advance Hunting and the Shooting Sports
Dallas Safari Club
Delta Waterfowl
Ducks Unlimited
Houston Safari Club
International Game Fish Association
Izaak Walton League of America
Major League Fishing
Masters of Foxhounds Association
Mule Deer Foundation
National Association of Forest Service Retirees
National Bobwhite & Grassland Initiative
National Deer Association
National Marine Manufacturers Association
National Shooting Sports Foundation
National Wild Turkey Federation
National Wildlife Federation
North American Falconers Association
North American Grouse Partnership
Orion: The Hunter’s Institute
Pheasants Forever
Pope & Young Club
Public Lands Foundation
Quail Forever
Rocky Mountain Elk Foundation
Ruffed Grouse Society
Safari Club International
The Bass Federation
The Walleye Federation
Theodore Roosevelt Conservation Partnership
Trout Unlimited
Whitetails Unlimited
Wild Sheep Foundation
Wildlife Forever
Wildlife Management Institute
Wildlife Mississippi
July 26, 2022

Honorable Tom Carper  
Chairman  
Environment and Public Works Committee  
United States Senate  
410 Dirksen Senate Office Building  
Washington, DC 20510

Honorable Shelley Moore Capito  
Ranking Member  
Environment and Public Works Committee  
United States Senate  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

The undersigned hunting, fishing, outdoor recreation, and conservation organizations write on behalf of millions of hunters, anglers and outdoor enthusiasts to request that you move swiftly to hold a hearing on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

This bipartisan legislation introduced by Senators Martin Heinrich and James Risch would help address some of the estimated 33,000 abandoned mine sites with environmental degradation where there is no party responsible for the cleanup. Toxic pollution at these sites compromises water quality, degrades fish and wildlife habitat, and poses dangers for outdoor recreationists. Cleanup costs could be as high as $54 billion and in many cases remediation of these sites falls upon Superfund, which is ill-suited to deal with the tens of thousands of abandoned mines polluting the environment.

State agencies and private groups who have no legal responsibility or connection to these abandoned mining projects – true Good Samaritans – want to help tackle some of these cleanup projects. Unfortunately, substantial liability risks under the Clean Water Act and CERCLA severely limit the work Good Samaritans and state agencies can do to reduce pollution from draining abandoned mines. In short, these laws treat volunteers who want to clean up abandoned mines as if they themselves are polluters.

S. 3571 would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement, environmental review, public hearings, and state and tribal consultation. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. Additionally, the bill specifies that mining activities are strictly prohibited. Lastly, if a permit violation causes an uncorrected worsening of environmental conditions, all liability protections would be voided.

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By passing the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022, Congress can facilitate safe, effective abandoned mine cleanups while also holding volunteer Good Samaritans accountable to terms of their permits. We respectfully urge you to swiftly take up this much-needed legislation.

Sincerely,

Backcountry Hunters & Anglers
Izaak Walton League of America
National Deer Association
National Wildlife Federation
Property and Environment Research Center
Sportsmen for the Boundary Waters
Theodore Roosevelt Conservation Partnership
Trout Unlimited

Cc:
Senator Martin Heinrich
Senator James Risch
Senator MERKLEY. Thank you very much, Director Cabrera.

We are now going to turn to Lauren Pagel, Policy Director of Earthworks. She is an expert on mining, oil, and gas policy, and has worked to protect communities from impacts of extraction for several decades. She has led the Earthworks team for over a decade and served as co-chair of the Methane Partners campaign since 2019.

Welcome.

STATEMENT OF LAUREN PAGEL,
POLICY DIRECTOR, EARTHWORKS

Ms. PAGEL. Thank you.

Thank you for the invitation to testify on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

My name is Lauren Pagel. I am the Policy Director at Earthworks. I really appreciate the opportunity to discuss ways Congress can help address the cleanup of abandoned hardrock mines and improve Good Samaritan policies.

Earthworks is a non-profit organization dedicated to protecting frontline communities and the environment from the impacts of mineral and energy development while supporting a rapid, just, equitable, and fair transition to renewable energy built from responsibly sourced materials. Earthworks supports S. 3571's goal of cleaning up abandoned hardrock mines that pollute ancestral, public, and private lands.

Good Samaritan policies can assist in addressing the problem of abandoned mines. But Good Samaritans alone are not the solution to cleaning up the hundreds of thousands of old mines in the West.

In addition to Good Samaritan policies, Earthworks supports the Biden administration's fundamental principles for domestic mining reform, as well as S. 4083, the Clean Energy and Minerals Reform Act of 2022. A fully funded hardrock mining reclamation program, paid for via a reclamation fee similar to what the coal mining industry pays, is an essential part of getting abandoned mines cleaned up.

Financial assurance provisions that reduce the risks and consequences of legacy pollution are also key, including EPA financial assurance requirements for the hardrock mining industry under Section 108(b) of CERCLA.

Some important improvements to S. 3571 would ensure communities and western waters are protected while also giving appropriate Good Samaritans limited liability relief for low risk cleanup projects. To ensure waters of the U.S. are adequately protected, Earthworks recommends to limit the Good Samaritan liability waiver under the Clean Water Act. A limited liability waiver should include only certain point source discharges under Section 402, and this 402 waiver should be non-transferrable and terminate if water quality conditions worsen or when the Good Samaritan cleanup process ends.

Good Samaritan projects should not include dredge and fill activities under Section 404, nor reopening of old adits on public lands, such as what happened at the Gold King Mine disaster in 2015.
On public lands, investigative sampling permits should be limited by scope and number and subject to public review. EPA can coordinate with the land management agency to protect against pollution from mineral reprocessing and ancillary uses.

Earthworks also recommends that the longstanding Clean Water Act citizen supervision for affected individuals and communities be retained in any Good Samaritan policy. These provisions help hold our government accountable and allow affected persons to seek judicial review to protect the environment when permitting agencies fail to do so.

Earthworks also supports Good Samaritan projects’ compliance with NEPA, which S. 3571 currently requires. NEPA waivers and categorical exclusions prevent Americans from having their voice heard on projects, and we are glad to see full compliance with NEPA in this bill.

We also urge compliance with the National Historic Preservation Act, which is very important to Tribes in the West.

Earthworks is eager to work with the Subcommittees and the bill’s sponsors to create Good Samaritan policy that is carefully crafted to safeguard against potential inadvertent misuse or abuse, and ensure that downstream communities, Tribes, and watersheds do not end up further polluted. This is especially important since most hardrock mining occurs under the 150 year old general mining law, a permissive statute whereby the mining industry claims public land as their own, almost entirely for free, and at great expense to public, especially indigenous, communities.

Good Samaritan policies are a small slice of a larger challenge of crafting more responsible mining policies in the United States. Swift action is needed to prevent future mining pollution and adequately address the larger scope of abandoned mine reclamation.

Meaningful reform of our Nation’s mining laws and regulations will create jobs and protect water in western communities from mine waste.

Thank you so much for this opportunity to present Earthworks’ views on these important issues.

[The prepared statement of Ms. Pagel follows:]
Testimony of Lauren Pagel, Earthworks Policy Director, before the U.S. Senate Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight and Subcommittee on Fisheries, Water, and Wildlife on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

September 29, 2022

Thank you for the invitation to testify on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. I appreciate the opportunity to discuss ways Congress can help address cleanup of abandoned hardrock mines and improve Good Samaritan mining policies. My name is Lauren Pagel, I am the policy director at Earthworks.

Earthworks is a non-profit organization dedicated to protecting frontline communities and the environment from the impacts of mineral and energy development while supporting a rapid, just, equitable, and fair transition to renewable energy built from responsibly sourced materials.

Earthworks supports S. 3571’s goal of cleaning up abandoned hardrock mines that pollute ancestral, public, and private lands throughout the American West. Earthworks believes that any abandoned mine clean up policies must also protect today’s communities from current and future mineral activities. Good Samaritan policies can assist in addressing the problem of the hundreds of thousands of abandoned mines that litter the West, but Good Samaritans alone are not the solution to all of the old mines that threaten our safety and clean water. Good Samaritan policy must be narrowly and carefully crafted to safeguard against potential inadvertent misuse or abuse and to ensure that downstream communities, Tribes, and the watershed do not end up with unintended environmental consequences.

S. 3571 focuses on abandoned hardrock mines permitted before the Interior Department finalized their public lands mining rules in 1980. However, mine pollution is not just a problem from the past. Perpetual pollution from mines permitted under current rules persists.1

In February 2022, the Biden-Harris administration published their Fundamental Principles for Domestic Mining Reform2 and their Interagency Working Group recommendations for EPA and other agencies are due by the end of 2022. These

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principles include several additional policy reforms that are essential to helping to address the problem of abandoned hardrock mines, including:

- Establish a Fully Funded Hardrock Mine Reclamation Program, paid for via reclamation fees similar to what the coal mining industry pays.
- Establish Strong Responsible Mining Standards that include financial assurance requirements to reduce the risk and consequences of legacy pollution, decrease the likelihood of catastrophic events, such as tailings impoundment failures, and protect taxpayers from companies that go bankrupt and leave operations inadequately closed.
- Require the EPA to review their financial assurance requirements for the hardrock mining industry pursuant to Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).¹

Creating a dedicated, significant stream of funding is necessary for this country to comprehensively inventory and prioritize abandoned mines, and to address this large scale problem that cannot be tackled without additional resources. Earthworks is happy to work with the Subcommittees to improve S. 3571 to ensure that communities and western waters are protected, while also giving appropriate Good Samaritans limited liability relief for low-risk clean up at abandoned mines.

**Mining Reforms to Cleanup Abandoned Hardrock Mine: More Jobs, Cleaner Water**

The principal way Congress can solve the problem of hardrock abandoned mine lands (AMLs) is to pass S. 4083, the Clean Energy Minerals Reform Act of 2022.² Complicated, expensive cleanups require a dedicated cleanup fund with resources from S. 4083’s hardrock mining royalty and reclamation fee.

The Surface Mining Control and Reclamation Act (SMCRA) has for two generations required the coal industry to pay similar fees for abandoned coal mine reclamation.³ This fee has successfully funded coal mine clean ups across the country. Yet, the hardrock mining industry pays no such fee. In fact, in some certified states, the coal industry’s funds go to clean up the messes from hardrock AMLs. Only an independent, dedicated, funding source from a hardrock royalty and reclamation fee, analogous to coal’s SMCRA AML program, will create the significant improvements needed to address the hundreds of thousands hardrock AMLs nationwide.

We appreciate Congress taking an important step by creating our nation’s first ever fund specially dedicated to hardrock AML cleanup in Section 40704 of 2021’s Infrastructure

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¹ See White House Fact Sheet on EO 13990 [https://www.whitehouse.gov/briefing-room/statements-releases/2020/01/29/fact-sheet-white-house-actions-for-review/](https://www.whitehouse.gov/briefing-room/statements-releases/2020/01/29/fact-sheet-white-house-actions-for-review/)
³ See 30 U.S.C. 215 chapter IV §121 et seq.
and Investment Jobs Act. In the FY23 budget, we urge Congress to appropriate funds authorized for this important program.

**Good Samaritan Cleanup of Abandoned Hardrock Mines**

Earthworks can, and has, supported a reasonable pathway for Good Samaritans to receive limited liability relief for simpler hardrock AML restoration pilot projects. For instance, Earthworks testified before this Committee in support of a bipartisan discussion draft of the Good Samaritan Cleanup of Orphan Mines Act of 2016.

The Good Samaritan policy objective is to create a system that encourages volunteer mine cleanup without allowing for abuse or resulting in worse environmental outcomes. Therefore, the liability protections enjoyed by the Good Samaritan should neither be transferable nor extended to activities that involve dredge and fill. Before this bill moves forward, we urge the Subcommittees to incorporate reasonable necessary guardrails for this pilot program to ensure that it will meet this objective.

Some of these guardrails are discussed below or are also contemplated by EPA’s existing administrative Good Samaritan process for hardrock AML. To facilitate the Good Samaritan work of civic, religious, and conservation organizations, the EPA has created a process through which qualified projects can receive liability relief from the Clean Water Act (CWA) and CERCLA. Due to lack of funds, very few mines have been cleaned up compared to the scope of the problem.

**Improvements to the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022**

Good Samaritan policies should not exacerbate risks to drinking and other water by undermining the intent of the CWA or CERCLA. Nor should they prevent Americans from having their voices heard on projects that will directly impact them, through methods such as NEPA waivers or Categorical Exclusions. Good Samaritan policies should also ensure that Americans can seek justice under the law if a cleanup project goes wrong and protect against the abuse of corporate structures that could allow companies to inappropriately obtain waivers or otherwise evade funding clean up.

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Earthworks is concerned about legislatively waiving liability from our bedrock environmental laws for activities that do not address, nor are related to, cleaning up the existing pollution, especially when those actions may cause increased pollution and harm to surrounding communities. Purported Good Samaritans already avail themselves of administrative waivers for individual cleanup projects through the EPA existing program for that purpose.

The long-standing CWA citizen suit provision for affected individuals and communities should be retained in any Good Samaritan policy. These provisions help hold our government accountable and allow affected persons to seek judicial review to protect the environment when the permitting agency fails to do so.

Additionally, any proposal should retain the need for an applicable Good Samaritan to apply for and obtain a CWA Section 404 permit from the Army Corps of Engineers. Otherwise, a fundamental protection for “waters of the U.S.” would be removed and would allow these waters to be turned into dry land, eliminating these waters from existence and from the protections they receive under the CWA.

Earthworks has been amenable to eligible Good Samaritans receiving limited liability waiver for certain point source discharges under Section 402 of the CWA. This waiver is non-transferable and limited to eligibility and duration; i.e., the period of cleanup activities: it would not persist in perpetuity. This limited waiver would excuse the Good Samaritan from obtaining a CWA discharge permit that otherwise applies to discharges where applicable water quality standards are not met. The legislation should terminate the liability waiver if water quality conditions worsen compared to the baseline.

Pilot projects need to be guaranteed low-risk. The bill as currently drafted, however, specifically allows for “plugging, opening, or otherwise altering the portal or adit of an abandoned mine site” on federal lands.9 This is precisely the type of remediation that resulted in the 2015 Gold King Mine environmental disaster, near Silverton, Colorado, that caused a release of toxic waste water into the Animas River.

Good Samaritan policies should not truncate the mine permitting process, including public input during the investigative sampling. Investigative sampling processes need to specifically exclude mineral exploration, prospecting, beneficiation, and metallurgical testing activities because these activities could pose risks to communities, lands, and waters. They should also be subject to public review. Further, the number of investigative sampling permits should be limited to the number of authorized pilot projects.

On public lands, a Good Samaritan performing investigative sampling should receive a Special Use Permit (SUP) from the applicable land management agency.10 In addition,

9 S. 3571 Section 4(c)(9)
10 The United States Forest Service special use regulations are at 36 CFR parts 251 and 261. The Bureau of Land Management special use regulations are at 43 CFR parts 2900 and 2920.
and subject to valid existing rights, the public lands agencies should consider withdrawing lands around and affected by pilot projects from entry or location under the mining laws. It is important to ensure the integrity of Good Samaritan clean up by safeguarding against the possibility of mining activities that could remove or negatively affect the positive environmental gains obtained through the clean up. This would also safeguard against abuses where an entity with an interest in mining later is able to obtain liability waivers, and thus convolute its liability for pollution.

Preventing abuses like this are especially important since most hardrock mining occurs under the 150 year old General Mining Law—an already permissive statute whereby the mining industry claims public lands as their own, almost entirely for free, and at great expense to the public, especially Indigenous communities. An SUP coupled with a mineral withdrawal on the lands around and affected by the pilot project could help ensure mining companies do not shroud themselves in a broad liability cloak over subsequent mining operations or activities reasonably incident thereto.

Public Review of Good Samaritan Permits

One benefit from S. 2571 is it requires compliance with NEPA, an essential safeguard for Good Samaritan pilot projects. The bill also precludes pilot projects with a significant environmental impact and requires a public hearing, albeit upon request. Robust review and community input under NEPA is an essential part of ensuring community engagement in these types of projects.

NEPA, the National Historic Preservation Act (NHPA), and other laws require that federal agencies study the environmental and cultural impacts of their decisions, receive public input, respond to that input, and select alternatives that best balance these considerations. Communities will depend upon these laws to learn more about Good Samaritan pilot project proposals and to suggest alternatives that will result in improved social and environmental outcomes. We urge S. 2571 to require compliance with the National Historic Preservation Act (NHPA) as well.

Conclusion

Thank you for the opportunity to present the views of Earthworks. We look forward to working with the co-sponsors and the Subcommittees to craft a better path forward for Good Samaritans to help clean up some abandoned mines across the west.

11 The process to privatize public lands with a patented mining claim is provided in the General Mining Law of 1872 30 U.S.C. 22 et seq. The process for public lands agencies to withdraw minerals from the General Mining Law is provided in Section 204 of the Federal Land Policy Management Act (PL. 104-153 30 U.S.C. 1714).
12 See 42 U.S.C. 4332 et seq.
13 See 16 U.S.C. §§ 470 et seq.
We also urge swift action to prevent future mining pollution and adequately address the larger scope of the abandoned mine reclamation challenge. Meaningful reform of our nation’s mining laws and regulations are the best solution to create jobs and protect water and western communities from mine waste.
Chairman Carper:

1. In your testimony you offer several recommendations to address potential gaps in the legislation to prevent additional harms that may result from negligence or misuse on the part of Good Samaritans covered under broad liability protection. This includes restricting the scope and duration of Clean Water Act liability waivers beyond what the current text of the bill allows. Cleanup of abandoned mine discharge is a difficult task and while such efforts can significantly improve water quality, there is no guarantee that the results will meet Clean Water Act standards. Please describe how your proposal to limit liability waivers would address this type of situation.

Thank you for these questions Chairman Carper. We agree that some Good Samaritan projects to restore hardrock abandoned mine lands (AML) will not likely result in achieving the Clean Water Act’s (CWA) water quality standards. The purpose of the CWA limited liability waiver is to encourage Good Samaritans to improve water quality from certain point source discharges, even if they fail to meet CWA standards. Under our proposal, the Good Samaritan may receive a limited CWA Section 402 waiver related to the pollutant discharges from that point source. As long as water quality conditions improve, the Good Samaritan need not achieve the standards. S. 3571’s Section 4(f)(3) requires water quality monitoring by Good Samaritan permit holders. If conditions worsen, liability should attach.

Furthermore, as you point out in your testimony, granting indefinite protection from liability following termination of a Good Samaritan permit creates risks associated with long-term accountability for cleanup projects. How do you propose reconciling the need to grant liability protection for permitted activities once projects have been completed?

As your questions indicate, Good Samaritan projects do carry risks. For each Good Samaritan pilot project, Congress should consider amending Section 4(c)(13) and Section 4(m)(1)(A)(vi)(V)(bb) to prohibit any form of corporate guarantee as acceptable financial assurance. Perpetual pollution from hardrock abandoned mine lands is its own long-term liability; and Good Samaritans alone cannot solve it.
One way for Congress to help reduce risks is to fund the hardrock AML cleanup program created in Section 40704 of 2021’s Infrastructure and Investment Jobs Act. We appreciate the bipartisan support to direct certain claim maintenance fees and other funds authorized for this important program in the FY ’23 budget.

The principal way Congress can solve the problem of hardrock abandoned mine lands (AMLs) is to pass S. 4083, the Clean Energy Minerals Reform Act of 2022. Complicated, expensive cleanups require a dedicated cleanup fund with resources from S. 4083’s hardrock mining royalty and fees. Providing a dedicated (polluter pay) funding source for ILHA’s Section 40704 hardrock AML program will help reduce overall financial and legal cleanup liabilities.

EPA can help protect against the long-term risks associated with hardrock mining cleanup by finalizing financial assurance rules for the sector pursuant to Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund).

2) The Environmental Protection Agency will develop guidance and issue the permits for the Good Samaritan pilot program. As such, the outcomes of cleanup efforts under Good Samaritan permits will rely heavily on the rigor of EPA guidance. This is especially important given that the current language is unclear with regard to permit violations that are not sufficiently corrected. Please describe any potential vulnerabilities to granting wide discretion to the EPA in this manner, referencing specific instances in the current language that would benefit from being more prescriptive.

S. 3571’s language can prescribe better guidance for EPA’s Good Samaritan pilot program. For instance, the bill could direct EPA’s Office of Mountains, Deserts, and Plains to build upon EPA’s existing process to facilitate more Good Samaritan hardrock AML reclamation. EPA has long-standing guidance through which qualified Good Samaritan projects can receive liability relief from the Clean Water Act (CWA) and Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund). EPA’s Good Samaritan guidance should ensure compliance with applicable Executive Orders including on Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government (E.O. 13985 January 20, 2021).

On or near public lands, EPA guidance could aid Good Samaritan projects with a Memorandum of Understanding (MOU) with the US Forest Service (USFS) or Department of Interior (DOI), as applicable. The MOU should instruct persons performing investigative sampling or Good Samaritan pilot project activities to receive a Special Use Permit (SUP) from the applicable land management agency. Congress should consider amending Sections 4(f)(1)(E) to clearly condition permits upon receipt of all applicable public land use authorizations, especially where the Good Samaritan exercises Section 4(f)(5)(B) provision for reprocessing materials. Because nearby mining activities could remove or negatively affect the positive environmental gains obtained through the clean up, the public lands agencies should consider withdrawing lands around and affected by pilot projects from entry or location under the mining laws.
3) Communities in close proximity to abandoned hardrock mines have a vested interest in the outcomes of Good Samaritan projects. Robust public engagement is vital for successful cleanup efforts, as local entities often have a unique understanding of the specific hazards associated with abandoned mine sites. The bill as written provides limited opportunities for public comment on proposed projects, but final approval of a Good Samaritan permit lies with the Federal government. Do you believe that the current legislation provides the appropriate level of public engagement in the approval process?

*Thank you for this question. The current legislation does include some, but not all, appropriate levels of public engagement in the permit approval process.*

a. Please describe your recommendations to expand the role of States, Tribes, and other local stakeholders in the approval process for Good Samaritan permits.

*The best way to expand the role of stakeholders is for Good Samaritans to perform ongoing meaningful engagement with communities who have an interest in the project. EPA guidance should instruct Good Samaritans to earn the free, prior, and informed consent (FPIC) of Tribes and Indigenous communities. Congress should also consider amending S. 3571 to provide for review under the National Historic Preservation Act. S. 3571 requires compliance with the National Environmental Policy Act (NEPA), an essential safeguard for Good Samaritan pilot projects. S. 3571 precludes pilot projects with a significant environmental impact and requires a public hearing, upon request. Review and community input under NEPA and NHPA are essential to ensure better outcomes.*

4) Please comment on any other potential improvements to the current bill language to ensure cleanup projects produce results that are good for the environment and public health, and prevent misuse and abuse of the program.

*The current bill language needs to clarify the obligations and liabilities of the investigative sampling permit holder. In particular, Congress should consider amending S. 3571’s Section 4(n) to remove liability waivers for investigative sampling permit holders who choose not to convert their activities into Good Samaritan pilot projects under Section 4(e). Congress should also consider removing language from Sections 4(d)(5)(A and B) allowing investigative sampling permit holders to decline to perform remediation where baseline conditions worsen. Investigative sampling permit holders should also provide adequate financial assurances under Section 4(e)(13).*

*The current bill language should also remove liability waivers from CWA Section 404, related to placing dredge and fill materials into waters of the United States.*

*Further, the long-standing CWA citizen suit provision for affected individuals and communities should be retained in any Good Samaritan policy. These provisions help hold our government accountable and allow affected persons to seek judicial review to protect the environment when the permitting agency fails to do so.*
Senator MERKLEY. Thank you very much for bringing your expertise to bear.

We are going to turn now to Chris Wood, the President and CEO of Trout Unlimited. Trout Unlimited is a national non-profit organization with 300,000 members and supporters dedicated to conserving, protecting, and restoring North American cold water fisheries and their watersheds.

Chris Wood had previously served as a senior policy and communications advisor to the Chief of the U.S. Forest Service. Welcome.

STATEMENT OF CHRIS WOOD,
PRESIDENT AND CEO, TROUT UNLIMITED

Mr. WOOD. Chairman Merkley, Ranking Member Lummis, and members of the Subcommittees, thank you for inviting me to testify on S. 3571. TU strongly supports this bill, and appreciates the excellent leadership of Senators Risch and Heinrich, although perhaps not Senator Risch’s criticism of my hunting, as well as the 16 other bipartisan cosponsors.

[Laughter.]

Mr. WOOD. For decades, TU has worked to restore abandoned mines, from the coal fields of Appalachia to the Rocky Mountain States. And we stand ready to work alongside our State and Federal agency partners, landowners, the mining industry, and other environmental groups, to implement low risk pilot projects that S. 3571 would authorize.

I am often described to you as the patron saint of neglected environmental causes, and no issue is more neglected than the damage caused by abandoned mines. The EPA estimates that 40 percent of all western headwaters are polluted by abandoned mines. These headwater systems are the sources of our coldest and cleanest water. They provide refuge for many species of native trout and salmon. More than half of these polluted streams are important sources of drinking water.

Two primary challenges limit abandoned mine restoration today. The first is a lack of funding. Unlike every other commodity that is developed off of our public lands, mining companies do not pay a royalty on the production of minerals. Coal mining companies, by contrast, have contributed over $11.5 billion into the Abandoned Mine Reclamation Fund, which fund has been used to great efficacy to clean up legacy coal mines across Appalachia and the western States.

The second major challenge to abandoned mine cleanups are liability issues. Good Samaritans, organizations like mine that had nothing to do with the creation of pollution, could spend a few hundred thousand dollars making waters more swimmable and fishable, and get to perhaps 95 percent of Clean Water Act standards. But it may cost a few million dollars more to achieve that extra increment of 5 percent.

So the organization that materially improved water quality could then be labeled by the government as a potentially responsible party. Or it could be subject to a citizen suit and compelled to get to 100 percent of Clean Water Act standards.
Abandoned mines are a pervasive problem. But the solutions for fixing them are usually straightforward. Over the past few decades, TU has completed more than 40 separate abandoned mine cleanups across the West, using the limited legal tools that are available to us for dealing with waste rock piles through CERCLA and non-point source provisions of the Clean Water Act. But there is so much more that we could accomplish.

TU members love the positive impact these projects have on trout populations. But it is important to remember that gravity works cheap, and it never takes a day off. When we reduce toxins from entering our waterways, we provide significant water filtration benefits for downstream communities. We know how to implement low risk mine cleanups to improve watershed and community health.

The problem is that two of our Nation’s most important environmental laws, the Clean Water Act and CERCLA, treat those who want to clean up pollution as if they are polluters themselves. Unless restoration results in discharges meeting 100 percent of Clean Water Act standards, Good Samaritans could be held liable for the remaining pollution.

Today the perfect stands as the enemy of the good. S. 3571 would establish a new 7 year pilot program administered by the EPA to permit up to 15 Good Samaritan cleanup projects. These low risk projects must produce measurable improvements in environmental conditions.

The bill expressly prohibits mining activities from Good Samaritan protection. There are no mining loopholes in this bill.

Last, only sites that are truly abandoned are eligible. No one who caused the pollution will get off the hook.

Taken together, these pilot projects will allow for Good Samaritans to make our water more drinkable, fishable, and swimmable. There is no constituency for orange rivers. We should be able to work together to pass this carefully crafted, tailored pilot program, learn from it, and then get to work at scale to recover the lands and waters upon which we all depend.

Thanks for the opportunity to testify today.

[The prepared statement of Mr. Wood follows:]
September 29, 2022

Testimony of Chris Wood
President and CEO of Trout Unlimited

Chairman Merkley, Ranking Member Lummis, and Members of the Subcommittees:

My name is Chris Wood, I am the President and CEO of Trout Unlimited (TU). Thank you for inviting me to testify on the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 (S. 3571). TU strongly supports the bill and has worked very hard on it for several years with a wide variety of stakeholders. We deeply appreciate the excellent leadership of Senators Heinrich and Risch on the bill, as well as the other 17 cosponsors representing both parties. We thank the subcommittees, as well as Chairman Carper and Ranking Member Capito for holding this hearing and focusing on an overlooked water quality problem with national implications.

TU’s mission is to bring together diverse interests to care for and recover rivers and streams so our children can experience the joy of wild and native trout and salmon. In pursuit of this mission, TU works to restore streams and rivers damaged by pollution from abandoned mine lands (AML) from the coalfields of Appalachia to hardrock mines of the Rocky Mountain states, to historical placer mines in Alaska. My testimony will focus on this work and how S. 3571 is essential to help tackle one of the greatest water quality problems facing our country: abandoned hardrock mines.

Trout Unlimited stands ready to work alongside state and federal agencies, landowners, the mining industry, and other environmental groups to implement low-risk pilot projects that S. 3571 would authorize. I offer the following testimony on behalf of TU and its more than 340,000 members and supporters nationwide.

Abandoned mines are a nationwide water quality crisis.

The scale and scope of pollution from abandoned hardrock mines is staggering. The Environmental Protection Agency (EPA), for example, estimates that 40 percent of western headwaters are polluted by abandoned mines. These headwater systems are the sources of our coldest and cleanest water. They also provide a refuge for many species of native trout and salmon. TU found that approximately 110,000 miles of streams – enough to circle the Earth four times – are listed as impaired for heavy metals or acidity. Pollution from abandoned mines is a major source of these impairments.
Of these impaired stream miles, 20 percent are in areas that contain native trout and more than half are in areas that are important drinking water sources. The Government Accountability Office (GAO) estimates that 33,000 abandoned hardrock mines are polluting the environment. These impacts affect all land ownerships, including public lands, state, tribal, and private lands. From the copper belt in Orange County, Vermont, to the Red Boy Mine in Oregon’s John Day Basin, and tens of thousands of places in between, our rivers, streams and communities have long suffered from the scourge of abandoned hardrock mines.

Scope and scale of the problem.

A 2020 GAO report estimates that there could be as many as 53,000 abandoned hardrock mines on lands under the jurisdiction of the Forest Service, Bureau of Land Management, National Park Service, and Environmental Protection Agency (EPA). On average, these agencies spend approximately $287 million annually to address physical safety and environmental hazards at abandoned hardrock mines, equating to approximately $2.9 billion in spending between 2008 through 2017. And yet, we’ve barely made a dent in the problem. By some estimates the costs to clean up abandoned mines could exceed $50 billion – at the current rate of federal spending, it would take nearly two centuries to clean up all the abandoned mines polluting our lands, waters, and communities.

Two primary challenges limit abandoned mine restoration. The first is a lack of funding. Unlike every other commodity that is developed off our public lands, mining companies do not pay a royalty or tax on the production of minerals. Coal mining companies, by contrast, have contributed over $11.6 billion into an Abandoned Mine Land Reclamation Fund, which states and tribes have tapped to clean up legacy coal mines across Appalachia and parts of the western United States.

Section 40704 of the Bipartisan Infrastructure Bill authorized $3 billion to clean up abandoned hardrock mines. Unfortunately, the bill did not appropriate the money. We are grateful for and see much promise in this program, but the Senate’s proposed FY 2023 appropriation is only $20 million in funding for this program, split among federal agencies, states, and tribes. Significant and dedicated funding for the section 40704 program is crucial, but this funding needs to be coupled with policy levers that allow would-be Good Samaritans to clean up abandoned mines.

The second major challenge to abandoned mine cleanup is liability.

Consider that Good Samaritans could spend a few hundred thousand dollars making waters more swimmable and fishable and get to 95 percent of Clean Water Act standards. But it may cost a few million dollars to achieve that final five percent. The organization that materially improved water quality could then be labeled by the government as a “potentially responsible party” or could be sued in a citizen suit and compelled to get to 100 percent.

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We have had success in engaging public/private partnerships to clean up some abandoned mines, but funding and liability hurdles remain an impediment to tackling the problem at scale. Liability issues are of concern across all land ownerships but are especially problematic on private lands.

Low-risk Good Samaritan cleanups can make a big difference for communities and the environment.

Abandoned mines are a pervasive problem but the solutions are often straightforward. In 2004, TU established our abandoned mine reclamation program, which has since completed more than 40 separate projects across six western states. Just this year, TU expanded our efforts into Alaska, and we aspire to do even more in the coming years.

Our first project was on lands owned by Snowbird Ski and Summer Resort in Utah. Snowbird had a few piles of abandoned mine tailings on their lands but was leery of trying to clean them up for fear of becoming a potentially responsible party. The limited scope of the problem made it exceedingly unlikely the EPA would use an enforcement action to make them clean up the piles. So, they remained, leaching out their toxic brew of zinc, cadmium, arsenic, and lead into American Fork Canyon—a creek that harbored imperiled Bonneville cutthroat trout.

We negotiated with the EPA and the Justice Department for about two years before we came up with a Good Samaritan policy that we could use to clean up those piles of tailings. It took about two weeks to clean up the problem.

The restoration was simple. We dug a few repositories and lined them with an impermeable barrier. Then, we bulldozed the tailings into the holes. We then placed another barrier over the top, covered it with soil, and then reseeded the area with native vegetation. Finally, we dug a French drain around the site, and placed a Jersey barrier around the piles to discourage local kids from riding their dirt bikes over the area.

To date, our abandoned mine clean ups have restored more than 200 stream miles and reclaimed 155 acres of mine-impacted lands. Many of those projects would not be possible without the financial and technical support from our private industry partners. Foundations such as the Tiffany & Company Foundation have provided the core seed funding that makes much of this work possible. Companies such as Freeport McMoRan, Kinross Gold Corporation, Newmont Mining, and Integra Resources provide valuable financial support that allows TU to leverage matching funds to accomplish meaningful reclamation, with measurable environmental improvements.

These restorations are also highly dependent on our ability to cobble together public funding from agencies such as the Forest Service and the Bureau of Land Management (BLM).

In 2014, for example, TU’s Colorado AML program cleaned up Evans Gulch outside of Leadville, Colorado. Evans Gulch is a tributary to the Arkansas River, one of Colorado’s Gold Medal trout fisheries, as well as the drinking water source for the town of Leadville and Lake County. The project reduced heavy metal loads impairing aquatic life by identifying non-point sources of contamination and eliminating sources of toxic runoff.

One of TU’s strong suits when it comes to mine cleanups is utilizing local economies, labor, and community assets. Across the country, we are seeing rural communities rally around the idea of recovering the lands and waters that sustain them. At Evans Gulch, TU hired a firm from Colorado that utilized local material suppliers and employed local workers throughout the project. In the end, approximately $200,000 went to the
Colorado contractor and material suppliers while the remaining balance of the project costs, approximately $118,000, were used to pay various local labs, legal fees, management costs, and local businesses.

In total, 325 cubic yards of contaminated mine wastes were graded, over an acre of mine wastes were treated and revegetated, 100 feet of channel was constructed to manage surface flows, 50 feet of streambanks were stabilized, 280 feet of buck and rail fence was installed to ensure safe public access to the site.

The goal of our AML work is to recover impaired rivers and streams to the point they support wild and native trout and salmon. Consider the case of Kerber Creek outside Villa Grove, Colorado. Through decades of industry, community, and agency partnership, along with twelve years of work by TU, a previously dead watershed that conveyed contaminated orange water, now sustains a wild trout fishery.

While my members love the positive impact these projects have on trout populations, it is important to remember that the work that we do to eliminate toxins from entering our waterways has significant water filtration benefits for downstream communities. Gravity works cheap, and it never takes a day off.

The Leavenworth Creek project in Colorado represents a decade of partner-based efforts to improve water quality and environmental conditions. Since 2015, Trout Unlimited, the Forest Service and other project partners have developed drainage solutions, expanded wetland habitat, closed open adits, reclaimed waste piles, restored a historic mill building and preserved key sites for historic and cultural interpretation. This work was supported by approximately $1 million in federal, State and private funding, helping to enhance habitat for wild trout and other species such as the endangered boreal toad (see, it’s not just about trout!), improving drinking water quality for the town of Georgetown, and reducing exposure and safety concerns for site visitors.

In Montana, TU recently completed the sixth phase of a long running western mine reclamation project on Ninemile Creek. The Ninemile is a major tributary to the Clark Fork River in western Montana. It was turned upside down by placer mining during the last century, resulting in long sections of channelized, dysfunctional stream. Since 2005, we have been systematically repairing Ninemile Creek, and – importantly – supporting rural Montana economies while we do it.

Recent phases of work totaling $1.7 million have been completed by a construction firm from Eureka, Montana, a historically timber-reliant community in Lincoln County. Lincoln County has one of the highest rates of unemployment in the State, and this project created multiple family-wage jobs for former loggers from the community. At the same time, the project has restored habitat and increased flows for native Westslope cutthroat trout and bull trout, a species that is listed for protection under the Endangered Species Act.

To date, we have restored 13 abandoned mines sites and over four miles of Ninemile Creek, and estimate that for every mile restored, an additional 0.5 cubic feet of groundwater entered the stream every second, providing cold, clean water throughout the summer. Again, recovering the health of these rivers does not only benefit trout and salmon. The benefits extend to everyone living downstream.
Liability risks are a barrier that Congress must address.

My point in describing these projects is to demonstrate that Good Samaritans know how to implement low risk mine cleanups to improve watershed and community health. Most of our work, however, is on public lands where the relevant agency can accept the liability.

Two of our nation’s most important environmental laws, the Clean Water Act and CERCLA, stymie our progress on private lands. As a nation, we ought to incentivize true Good Samaritans—organizations such as TU that had nothing to do with the creation of the pollution but volunteer to be part of the solution in making things better. Instead, we are often prevented from fully deploying our expertise and resources by the liability risks associated with the Clean Water Act and CERCLA. This is because these environmental laws, vital as they are, treat those who want to clean up pollution as if they are polluters themselves.

Consider: Due to liability under the Clean Water Act, the most viable mechanism to tackle draining abandoned mines with a “point source” of pollution—such as a draining mine adit—is a federal Superfund cleanup. However, the Superfund program only addresses sites on the National Priorities List, which typically include the largest, most complex, and most expensive clean ups. Superfund was not designed to address the vast majority of abandoned mine pollution discharges across the country. Thousands of these abandoned mines that fall outside the Superfund program bleed toxic lead, arsenic, zinc and mercury every single day, but we lack a sufficient legal mechanism authorizing state agencies, private organizations and other willing parties to complement limited federal cleanup capacity by taking on smaller, low-risk remediation projects.

This legal conundrum stands in the way of cleanups such as the Lily Orphan Boy mine near Helena, Montana. Under a partnership between the Montana Department of Environmental Quality and Trout Unlimited, a cleanup removed toxic mine waste and restored the floodplain. However, partners could not legally treat the acid mine drainage without taking on substantial liability risk.

Again, unless remediation results in discharges meeting 100 percent of water quality standards, Good Samaritans could be held liable for the remaining pollution and sued under the Clean Water Act, even if substantial improvements in water quality have been made. This situation is not unique. The perfect stands in the way of the good at most abandoned mine sites throughout the country.

Good Samaritans such as Trout Unlimited are already making a difference remediating a smaller subset of “non-point source” mines that do not possess the same degree of liability that is present with discharging “point source” abandoned hardrock mines. This work is being done via time-consuming and costly settlement agreements with the federal government through the CERCLA process.

These settlement agreements partially address liability but have shortcomings. Those include: 1) considerable costs and resources that go to lawyers instead of on-the-ground restoration; 2) liability protections that apply to Good Samaritans but not landowners, leaving many landowners unwilling to participate; and 3) liability protections that are insufficient for any remaining point sources of pollution (i.e., acid mine drainage), leaving Good Samaritans subject to permitting requirements of the National Pollution Discharge Elimination System and enforcement actions unless projects fully attain water quality standards. In most cases this simply is not possible for Good Samaritan projects even though significant improvements in water quality would be realized.

The result is that cost-effective, low-risk projects to treat acid mine drainage are shelved while pollution continues. We can and must do better.
The Good Samaritan Remediation of Abandoned Hardrock Mines Act is a solution to this vexing problem. S. 3571 would establish a new seven-year pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires these remediation projects to pose a low risk to the environment while producing measurable improvements in environmental conditions. The bill stipulates requirements for National Environmental Policy Act (NEPA) review and a rigorous, transparent public process that includes public hearings if requested.

The EPA is under no obligation to approve a permit, but if approved, qualified Good Samaritans would be provided with conditional liability relief, assuming they do what they told the EPA they would. Liability protection only extends to volunteers conducting approved remediation activities identified in permits. Any other current or future activities not identified in permits are subject to applicable environmental laws, including full compliance with the Clean Water Act.

If a permit violation causes an uncorrected worsening of environmental conditions, all liability protections would be voided, and parties could be subject to citizen suits and enforcement actions. Liability protections only apply to persons identified in approved permits and would not apply to future owners or operators. The bill expressly prohibits mining activities from being covered by any liability waivers. There are no mining “loopholes” and the legislation is unambiguous on this point. Lastly, only sites that are truly abandoned are eligible – nobody who has caused pollution will get off the hook.

The scope of S. 3571 is to implement 15 low-risk pilot projects over seven years, after which EPA will report back to Congress on the results, so that lawmakers can determine whether to allow more similar projects to go forward. In this way, the bill is narrowly tailored to test the Good Samaritan cleanup concept with minimal risk and without significant revisions to the Clean Water Act or CERCLA.

Taken together, these pilot projects will allow for Good Samaritans to demonstrate the interest, capacity, and knowledge of how to make our water more drinkable, fishable, and swimmable.

At a time when many Americans are confounded by what they can do to pass on a healthier land legacy to our children, these pilots provide an opportunity to demonstrate tangible steps to make our rivers healthier for our families. There is no constituency for orange rivers. We should be able to work together to pass this tailored pilot program, learn from it, and then get to work at scale to recover the lands and waters upon which we all depend.

We fully recognize that this legislation can only begin to address the scope and scale of the abandoned mine problem. However, Trout Unlimited and our partners in communities where such cleanups take place have proven that considerable progress can be made to transform dead, toxic streams into a living resource. The objective of the Clean Water Act is to restore and maintain the integrity of our nation’s waters and S. 3571 is a much-needed tool that will move us closer to that objective.

Conclusion

In 1999, Democratic U.S. Sen. Max Baucus introduced the first Good Samaritan bill alongside Republican U.S. Sen. Ben Nighthorse Campbell. In his introductory remarks on the Senate floor, Senator Baucus said, "But my hope is that we can proceed quickly, through a hearing and mark-up, so that, before long, this important bill can be enacted into law. If so, we soon will see success stories, all across the west.”
In the 23 years since, Congress has yet to provide Good Samaritans with the tools necessary to create those success stories. At the same time, abandoned mines that otherwise could have been cleaned up sit like ticking time bombs on the landscape releasing their toxic brew of cadmium, arsenic, lead, and zinc. It is communities across rural America that are on the front line, continuing to bear the burden of this pollution. We ask for your help cleaning up abandoned mines and urge the Committee to advance the Good Samaritan Remediation of Abandoned Hardrock Mines Act.

Thank you for the opportunity to testify today.
Chairman Carper:

1. The Environmental Protection Agency will develop guidance and issue the permits for the Good Samaritan pilot program. As such, the outcomes of cleanup efforts under Good Samaritan permits will rely heavily on the rigor of EPA guidance. This is especially important given that the current language is unclear with regard to permit violations that are not sufficiently corrected. Is there merit to including explicit language that provides a clear delineation of when relief of liability is removed for permit violations, rather than reliance on EPA guidance?

Trout Unlimited answer: As written, liability relief provided by subsection (n) is for an approved Good Samaritan conducting activities “identified in, carried out pursuant to, and in compliance with” the approved permit. This liability relief would not be in effect if there is a permit violation that results in an uncorrected worsening of environmental conditions below documented baseline conditions. If the role or expectation of the EPA to enforce this provision is not clear, then there may be merit in additional language in subsection (j) to be more prescriptive with regard to the EPA’s responsibility to diligently bring permittees into compliance and restore site conditions. Additional clarity can also be provided as part of the rulemaking required by subsection (g).

a. What impact would allowing citizen suits in the case of negligence on the part of the permittee have on the willingness for potential Good Samaritans to participate in cleanups?

Trout Unlimited answer: The liability protections provided by subsection (n) only apply to approved activities identified in permits and would be inapplicable with respect to negligent actions. As a result, responsible parties would be subject to enforcement and/or citizen suits. As a practical matter, we believe that the construction of the liability safe harbor already allows for citizen suits in situations that may be considered negligent. Moreover, subsection (n)(2)(B) stipulates that “any activity not authorized by a Good Samaritan permit, as determined by the Administrator, may be subject to liability and enforcement under all applicable law;” including the Clean Water Act and CERCLA.

b. Are there any other opportunities to provide more clarity in the bill text rather than defer to the EPA for development of the program guidance?
Trout Unlimited answer: We are open to all ideas to strengthen the bill and ensure a successful pilot program so that Good Samaritans can help clean up abandoned mines. Subsection (s) requires the EPA to conduct rulemaking in consultation with State, Tribal, and local officials to establish requirements necessary to carry out the pilot program. Additional Congressional direction for regulations that the EPA shall develop could provide added clarity, such as what reasonable measures and timelines must be met to restore site conditions back to baseline conditions, a clear delineation of when relief of liability is removed for permit violations, and the types of projects considered “low risk.”

2. Communities in close proximity to abandoned hardrock mines have a vested interest in the outcomes of Good Samaritan projects. Robust public engagement is vital for successful cleanup efforts, as local entities often have a unique understanding of the specific hazards associated with abandoned mine sites. The bill provides opportunities for the public to comment on proposed projects, but final approval of a Good Samaritan permit lies with the Federal government. This leaves no recourse for local entities that may object to certain terms of a permit. How can this legislation expand the role of States, Tribes, and other local stakeholders in the approval process for Good Samaritan permits?

Trout Unlimited answer: We agree that community involvement is vital and S. 3571’s public engagement provisions, including a public hearing if requested, will help to ensure a permitting process that is grounded in stakeholder engagement. Additionally, subsection (l) requires that the lead agency coordinate procedures “to the maximum extent practicable” with State, Tribal, and Federal cooperating agencies. As a pilot program administered by the EPA, it is appropriate for the final approval to lie with the federal government. However, that is not to say that non-federal entities are without recourse for a permit that is issued in error and nothing in the bill precludes judicial review for agency decisions. To the contrary, subsection (h) accounts for and anticipates judicial review, stipulating that work shall commence “not later than the date that is 18 months after the date on which the judicial review, including any appeals, has concluded.” Lastly, an additional provision could be modeled on CERCLA’s community relations requirements (40 CFR § 300.415(n)(3)(i)) to conduct “interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved.”

Finally, the hearing demonstrated broad support for this bill by many communities, states, and stakeholders in the West. People in the West, afflicted by hardrock mine pollution for decades, are ready to engage with Good Samaritans, EPA, and state agencies to get moving forward on the big task ahead.

3. Good Samaritan legislation has evolved over the years to address concerns about broad waivers of liability for Good Samaritans under environmental statutes like the Clean Water Act and CERCLA. The current language attempts to assuage these concerns by capping the number of permits issued and specifying that only “low-risk” projects are eligible to receive protection from liability. However, the incentives granted to Good Samaritans extend in perpetuity following termination of a permit. Remediation infrastructure installed under a permit that remains long after termination may require maintenance and upkeep to remain functional. Does the legislation as written provide
adequate accountability for the outcomes of Good Samaritan projects beyond termination of permits?

**Trout Unlimited answer:** Yes, we believe that S. 3571 does include appropriate accountability after termination of a permit. In granting a permit (subsection (m)), the applicant must demonstrate that they have, or have access to, “the financial resources to complete the project described in the Good Samaritan permit application, including any long-term monitoring and operations and maintenance that the Administrator may require the applicant to perform in the Good Samaritan permit.” In other words, long-term operation and maintenance can be written into workplans and permit terms. Additionally, subsection (r) stipulates that, in the case of a project that involves long-term operations and maintenance on public lands, a permit may be terminated “if the applicable Good Samaritan has entered into an agreement with the applicable Federal land management agency or a cooperating person for the long-term operations and maintenance that includes sufficient funding for the long-term operations and maintenance.”

a. What additional protections should be considered to ensure proper long-term accountability for permitted activities, and that liability protections after termination do not apply beyond their original intent?

**Trout Unlimited answer:** A provision could also be added that extends a similar requirement to non-federal lands in which the Good Samaritan would need to enter into a long-term agreement with the landowner/manager for operations and maintenance following termination of the permit for applicable projects.

The liability protections provided in subsection (n) only apply to activities approved in permits. If an activity is not identified in the permit, then the full force and effect of all environmental laws are applicable – there is no ambiguity on this point that would allow liability protection to apply beyond their original intent.

4. Please comment on any other potential improvements to the current bill language to ensure cleanup projects produce results that are good for the environment and public health, and prevent misuse and abuse of the program.

**Trout Unlimited answer:** We offer the following recommendations to ensure a successful pilot program that results in cleaner, healthier waters and communities:

- Revise S. 3571 to stipulate that at no time can the number of active investigative sampling permits exceed 15. This would ensure that investigative sampling permits are issued judiciously to create a pipeline of remediation projects ready for implementation.
- Specify that metallurgical testing and any authorized reprocessing can only be of historic mine residue. This will ensure that any reprocessing is conducted only as part of remediation and no new, undisturbed ore bodies or materials are tested or extracted.
- Further define “cooperating person” to exclude any person who had a “role in the creation of the historic mine residue”. This would align with the definition of a “Good Samaritan”.
• Clarify that the conditional liability safe harbor in subsection (n) applies to investigative sampling permits (i.e., if an investigative sampling permit violation causes an uncorrected environmental problem, then the permit-holder loses liability protections).
• Currently, the bill prohibits any action that requires plugging, opening, or otherwise altering the portal or adit the abandoned mine site on non-federal land. This prohibition could be also extended to projects on public lands to further restrict the types of low-risk cleanups that are eligible for the pilot program.

**Senator Sullivan:**

1. Current law fails to protect Good Samaritans, which is why this legislation is important. The world-class transboundary rivers that originate in Northwest British Columbia and flow into Southeast Alaska are iconic salmon rivers, and their watersheds are central to our fishing industry as well as tourism in Southeast Alaska. These rivers are protected by the high standards set under Alaska and federal law. Our jurisdiction only goes to the border though. On the other side, there is large-scale, hard rock mining development near the Canadian headwaters of these rivers. Some of these mines —particularly the defunct Tulaquah Chief mine— have contributed to the release of hazardous material that could have impacts on our waters in Alaska. How would this legislation balance responsible mining with conservation, like avoiding and minimizing impacts to wild and native fisheries in Alaska?

**Trout Unlimited answer:** Subsection (f) stipulates that “no mineral exploration, processing, beneficiation, or mining shall be authorized by this Act.” However, it is important to note that those in the mining industry that had nothing to do with the creation of the pollution have a crucial role in the cleanup of abandoned mine sites by bringing to bear knowledge, resources and equipment that can take remediation projects from idea to reality. One example from Alaska that demonstrates how this legislation would balance responsible mining with conservation is the collaboration between Trout Unlimited and Kinross Gold to restore Resurrection Creek on the Kenai Peninsula as part of the Alaska Abandoned Mine Restoration Initiative. The Resurrection Creek restoration project had sat idle for more than 15 years due to a lack of resources. Through this new partnership, we breathed new life into the project and are in the process of restoring more than 2.5 miles of critical spawning and rearing habitat for Chinook, coho, chum and pink salmon impacted by historic placer mining. With liability protections in place for non-liable parties, this legislation would allow these types of partnerships to expand to include projects that clean up hazardous materials and make our rivers and streams healthier for fisheries and communities alike.

   a. Could you speak to the importance of cooperation between agencies, stakeholders, and governments in ensuring that environmental negligence, like what Alaska experiences with the Canadian government, can give way to meaningful engagement and collaboration toward safeguarding our shared waterways?

**Trout Unlimited answer:** Healthy rivers, lands and communities are shared resources, and it will take all stakeholders to ensure that we heed Theodore Roosevelt’s call to pass on our natural resources to the next generation “increased and not impaired in value”. Collaboration built on
trust and open communication is a hallmark of meaningful engagement and has been a key to the success of Trout Unlimited’s efforts to clean up abandoned mines, and it will remain central to the pilot program envisioned by S. 3571.

2. Current federal law requires Good Samaritans who seek to conduct a restoration project on an abandoned mine site to be legally responsible for the pollution as soon as they touch the mine site, even if they had no prior association or responsibility for the mine itself. As a result, mine sites are often left abandoned, contributing to degraded water quality and negative impacts to fish and wildlife habitat. BLM has identified over 200 of these sites in Alaska. However, one challenge to a reclamation project in Alaska is that workers have just a short three to five-month window before freeze-up sets in and they are unable to move the land. This legislation would establish a pilot program to permit up to 15 Good Samaritan abandoned mine cleanup projects. Do you see this program expanding past the current 15 projects this pilot program permits?

**Trout Unlimited answer:** Our long-term goal is for permanent Good Samaritan permitting program that builds on and learns from the pilot program that would be authorized by S. 3571.

   a. Can you speak to any concerns you might have with EPA carrying out the permitting process for this legislation on non-federal lands?

**Trout Unlimited answer:** We do not have any concerns with the EPA administering the permitting process on non-federal lands. As a federal pilot program that provides qualified Good Samaritans with a conditional liability safe harbor from federal laws under the jurisdiction of the EPA, it is appropriate that the EPA carry out the permitting process. Importantly, the permitting process is open and transparent with ample opportunity for input and engagement with all stakeholders, including state, local and Tribal governments, nearby landowners, and affected communities.

   b. Does this bill establish any waivers under NEPA, or permit activities on AML sites likely to worsen environmental and safety issues? Can you expand on why it does not?

**Trout Unlimited answer:** S. 3571 does not establish any NEPA waivers, exemptions or categorical exclusions. If the required NEPA procedures conclude that a project may have significant impacts, then the Administrator may not permit the project. In this way, the bill establishes NEPA as a backstop to deny permits for complex projects that may result in significant impacts. Subsection (f) specifically states that nothing in the bill exempts the Secretary of Agriculture or the Secretary of the Interior from any other requirements of NEPA.

In approving a permit (subsection (m)), the EPA must determine that the proposed activities “will make measurable progress toward achieving applicable water quality standards,” or “are designed to result in improved soil quality or other environmental or safety conditions,” or will result in “reductions in further threats to soil quality or other environmental or safety conditions.” In other words, activities that are likely to worsen the environment and safety issues would not be permitted.
Senator MERKLEY. Thank you very much.
We will now turn to Jim Ogsbury.
Are you introducing Mr. Ogsbury?
Senator LUMMIS. I am not, but I can.
Senator MERKLEY. You would be most welcome to.
Senator LUMMIS. Thank you.
Jim Ogsbury is the head of the Western Governors' Association.
It is the 17 western States, as I recall, and the island governments.
The good work of the Western Governors is very bipartisan. They
alternate between Democrat and Republican Governors in terms of
the leadership of the group. And they address issues that are typ-
ical problems that are common within those western States.
They also have fellows from a lot of Federal agencies that can
contribute expertise. So you get a very balanced set of rec-
ommendations coming out of the Western Governors' Association.
I used to be on the staff counsel of the Western Governors' Asso-
ciation when I was a general counsel to my Governor, Jim
Geringer, of Wyoming, and found the work of the Western Gov-
ernors to be especially pragmatic, common sense, helpful, bipar-
tisan, and very targeted to address common issues of concern to the
western States.
Jim Ogsbury does a wonderful job leading that organization.
Welcome, Jim, to the Senate Committee.
Senator MERKLEY. We are delighted to have you, and that type
of bipartisan record on issues in western States is so appropriate
on this particular issue.

STATEMENT OF JIM OG SBURY,
EXECUTIVE DIRECTOR, WESTERN GOVERNORS' ASSOCIATION

Mr. OGSBURY. Thank you very much.
Chair Merkley, Ranking Member Lummis, my name is Jim
Ogsbury. I am the Executive Director of the Western Governors' Asso-
ciation, a fiercely bipartisan organization representing the
Governors of the 22 westernmost States and territories.
WGA is an instrument of the Governors for bipartisan policy de-
velopment and information sharing, and collective action on issues
of critical importance to the western United States. It is an honor
to join you today.
Thank you for your attention to the important issue of aban-
doned hardrock mines, and considering S. 3571, the Good Samari-
tan Remediation of Abandoned Hardrock Mines Act of 2022. I
would like to acknowledge Senators Heinrich and Risch for their bi-
partisan leadership on this issue, and the strong bipartisan support
that the legislation has attracted from other western Senators.
Western Governors have had formal policy on this issue and li-
ability protections for Good Samaritans since 1995. Their current
policy is articulated in WGA Policy Resolution 21–09, Cleaning Up
Abandoned Hardrock Mines in the West. That resolution, included
with my written testimony, states, “Western Governors call on Con-
gress to legally protect Good Samaritans who clean up abandoned
mines, including local and State governments, from becoming le-
gally responsible for any continuing discharges from the abandoned
mine.”
The resolution also specifically supports the kind of pilot program authorized by S. 3571. Again, quoting from the resolution, “Governors would support legislation establishing pilot projects, including pilot projects under State led programs to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.”

The issue of abandoned hardrock mines has concerned Western Governors for decades, and they encourage congressional action now. The number of problematic mines is unknown, but the Government Accountability Office reports that tens of thousands of mines present confirmed environmental or physical hazards. To repeat the astonishing statistic already cited by Chair Merkley and Chris Wood, the Environmental Protection Agency estimates that 40 percent of western headwaters have been affected by abandoned hardrock mining discharges.

Discharges of acidic mine drainage degrade water supplies for working lands and communities. They harm aquatic species. They lead to losses for recreation economies. The scope of this problem is massive. Federal agencies estimate that the total cost of addressing these hazards is on the scale of tens of billions of dollars.

Cleanup of abandoned hardrock mines is impeded by insufficient funding, incomplete data establishing the scope of the problem, and a lack of common agreement concerning remediation needs and priorities. Another significant impediment is the potential legal liability of Good Samaritans who are willing to undertake remediation projects, but cannot bear the risks of being sued for their actions. Such parties who otherwise would have no responsibility for the pollution at abandoned hardrock mine sites can significantly increase the Nation's capacity to access and remediate these mines.

Good Samaritans can be a powerful engine of abandoned mine cleanup, but only with funding and liability protection of the kind offered by S. 3571.

Under the bill, EPA is responsible for determining Good Samaritan eligibility. Western Governors submit that States are more than qualified to assist in making that determination. Many States have agencies that administer the Clean Water Act, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. These States are suited to help determine which entities should be eligible for Good Samaritan status, and to review and determine the adequacy of Good Samaritan reclamation plans.

States are equipped to address the complexities associated with checkerboard land ownership in the West, and they can facilitate the kind of collaboration that is essential to address cross-boundary, cross-jurisdictional resource management issues. Good Samaritan issue legislation should recognize State authority and the expertise that States can bring to bear with respect to the pilot program's implementation.

Thank you again for providing the opportunity to submit testimony on behalf of Western Governors.

[The prepared statement of Mr. Ogsbury follows:]
Testimony of James D. Ogsbury, Executive Director  
Western Governors’ Association

Before the United States Senate  
Committee on Environment and Public Works  
Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight  
Subcommittee on Fisheries, Wildlife, and Water

Legislative Hearing on S. 3571 - Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

September 29, 2022

Chairs Merkley and Duckworth, Ranking Members Wicker and Lummis, and Members of the Subcommittees, my name is Jim Ogsbury and I serve as the Executive Director of the Western Governors’ Association, a fiercely bipartisan organization representing the Governors of the 22 westernmost states and territories. WGA is an instrument of the Governors for bipartisan policy development, information sharing and collective action on issues of critical importance to the western United States. I am honored to join you today.

Thank you for your attention to the important issue of abandoned hardrock mines and holding this hearing on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act. I want to also thank Senators Heinrich and Risch for their bipartisan leadership on this important issue, and the strong bipartisan support the legislation has attracted from other western state Senators.

Western Governors have long been concerned about the effects of abandoned mines on western communities, ecosystems and economies, and they have supported efforts to provide protections for Good Samaritans for nearly 30 years. Good Samaritans have no liability or responsibility for the pollution at abandoned hard rock mine sites but are nonetheless willing to voluntarily clean up these often heavily polluted sites.

Hardrock mining in the American West dates back nearly two centuries. It was one of the driving forces behind westward expansion, and mineral development remains an essential component of some western communities’ economic base. The history of hardrock mining is interwoven with the history of the West, and some of the historic mining operations continue to have long-term, ongoing effects on downstream communities and ecosystems.

Although the total number of such mines is unknown, a 2020 Government Accountability Office (GAO) study reported that at least 1,363 “mine features” pose significant hazards to the environment, and an additional 21,262 mine features pose unconfirmed environmental hazards. The Environmental Protection Agency estimates claims that approximately 40 percent of western headwaters have been affected by abandoned hardrock mining discharges.
Regardless of the exact number of abandoned mines and mine features, one thing is certain: some are predictably having substantial, negative effects on western communities and the environment. Discharges of acidic mine drainage degrade water supplies for working lands and communities, harm aquatic species, and lead to economic losses for recreation economies.

The GAO reports that, between 2008 and 2017, federal agencies spent a total of $2.9 billion identifying, cleaning up, and monitoring abandoned hardrock mines. State agencies spent about $117 million in nonfederal funds over the same period. Federal agencies estimate the total cost of addressing the environmental and physical hazards of these mines is on the scale of tens of billions of dollars. Uncertainty surrounding the number and condition of abandoned hardrock mine sites makes it challenging to accurately quantify this cost. Even if an accurate cost could be calculated, funding is only one of the limiting factors.

The Governors’ first policy resolution on the subject was approved in 1995, and they have maintained policy on abandoned hardrock mines ever since. Their current policy is articulated in WGA Policy Resolution 2021-09, *Cleaning Up Abandoned Hardrock Mines in the West*. The resolution specifically supports the kind of pilot projects that S. 3571 authorizes. It also calls for:

- Legally protecting Good Samaritans – including local and state government agencies – who clean up abandoned mines from becoming responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.

- Developing remedies for liabilities associated with remining, which deter those best equipped with technology and expertise from improving conditions at abandoned mines.

- Increasing federal funding and workforce capacity dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs.

The Good Samaritan Remediation of Abandoned Hardrock Mines Act would satisfy many of these goals while paving the way for comprehensive legislation that legally protects Good Samaritans. There is one significant difference between the Governors’ policy and the proposed legislation: S. 3571 would make EPA responsible for determining Good Samaritan eligibility. Western Governors submit that states are more than qualified to make this determination. Many states have agencies that administer the Clean Water Act, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. These states are best suited to determine which entities should be eligible for Good Samaritan status and to review and determine the adequacy of Good Samaritan reclamation plans. Good Samaritan legislation should recognize state authority and expertise in these areas.

Cleanup of abandoned hardrock mines is impeded by: insufficient funding; concerns about liability for Good Samaritans; a paucity of data establishing the scope of the problem; and
a lack of common agreement concerning remediation needs and priorities. State and federal agencies have authority and some funding to remediate abandoned mines on public lands, but complex land and mineral ownership patterns in mining districts are prohibitively challenging for both western states and the federal government. Good Samaritans can enhance the nation’s capacity to access and remediate mines, especially abandoned mines outside of the jurisdiction of federal land management agencies. Good Samaritans can be a powerful force for abandoned mine cleanup, but only with funding and liability protection. As WGA has found with respect to other environmental and natural resource issues, collaboration is essential to solving these types of cross-boundary management issues.

The Good Samaritan Remediation of Abandoned Hardrock Mines Act would establish a Good Samaritan pilot program of a type that Western Governors explicitly call for in Policy Resolution 2021-09, providing a tool to protect communities, economies, and ecosystems against the ongoing impacts of abandoned mines. Such a pilot program can inform and be a precursor to a comprehensive mine remediation program to address the tens of thousands of abandoned mines and their associated hazards.

Thank you for providing the opportunity to submit testimony on behalf of WGA. Western Governors appreciate your examination of the myriad challenges posed by abandoned mines, and they stand ready to assist as you consider steps to improve the health of our nation’s lands, waters and communities.
A. **BACKGROUND**

1. Hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper. As part of this past, the West contains historically mined and abandoned hardrock mines, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the cleanup and reclamation.

2. The cleanup of abandoned hardrock mines is hampered by two issues – lack of funding and concerns about liability. These issues are compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site.

3. There are numerous economic, environmental, and social benefits from remediating lands and waters impaired by abandoned hardrock mines. In recognition of these benefits, states, municipalities, federal agencies, volunteer citizen groups, and private parties have engaged in or are interested in voluntarily cleaning up abandoned mines. Parties who voluntarily engage in abandoned mine cleanup, but have no liability or responsibility requiring them to clean up the abandoned mine, are referred to in this resolution as Good Samaritans. However, questions of liability stemming from this voluntary cleanup have stymied many of these efforts.

4. Good Samaritans currently have potential liability for their voluntary cleanup under Sections 301 and 402 of the Clean Water Act (CWA), because they can inherit liability for any discharges from an abandoned mine. In addition, Good Samaritans have potential liability for their voluntary cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).

5. Good Samaritans are exposed to these liability risks despite the fact that: they did not previously operate or own the mine; they would voluntarily bear the costs of the cleanup; and they could provide numerous benefits if they were able to remediate the abandoned mine, such as improving water quality, facilitating beneficial land use, and securing the site.

6. Liability concerns also prevent mining companies from remining or voluntarily cleaning up abandoned mines. While remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for voluntary efforts.

7. In many western states, abandoned hardrock mine cleanup projects on public lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs. Allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.
8. On March 5, 2020, the U.S. Government Accountability Office (GAO) published its report, Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors that Limit Efforts to Address Hazards (GAO-20-238). Bureau of Land Management officials estimated that with the agency’s current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database.

9. Because of safety and environmental concerns, the majority of abandoned hardrock mine sites remain idle without any type of reuse. The U.S. Environmental Protection Agency has identified developing solar projects on abandoned hardrock mine sites as an innovative solution to generate energy and return abandoned mine lands to productivity while considering economic, environmental and social effects.

B. GOVERNORS’ POLICY STATEMENT

1. Western Governors call on Congress to legally protect Good Samaritans who clean up abandoned mines, including local and state government agencies, from becoming legally responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.

2. Western Governors call on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA and RCRA liabilities for Good Samaritans. The federal government should also develop remedies for liabilities associated with remining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental, the mining industry) from improving conditions at abandoned mines.

3. As the costs to clean up abandoned hardrock mines are significant, Western Governors support efforts by Congress and the Administration that would facilitate cleanups by Good Samaritans. To this end, the requirements for Good Samaritan project approvals and reviews should not deter cleanups, while still ensuring there are significant measurable environmental gains from the project. Governors would also support legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.

4. Many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. These states are best suited to determine which entities are eligible for Good Samaritan status and to review and determine the adequacy of Good Samaritan reclamation plans.

5. Federal land managers and state officials that responded to the March 5, 2020 GAO Report consistently expressed that their backlog of work on these mines far exceeds their current staff and budget levels. Western Governors support increased federal funding and workforce capacity dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs.
6. Western Governors support legislation to clarify and, where possible, minimize liabilities associated with developing abandoned hardrock mine sites with solar arrays and other reuse projects with beneficial economic, environmental, and social effects.

C. GOVERNORS’ MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in June 2024. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult http://www.westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.
Chairman Carper:

1. Communities in close proximity to abandoned hardrock mines have a vested interest in the outcomes of Good Samaritan projects. Robust public engagement is vital for successful cleanup efforts, as local entities often have a unique understanding of the specific hazards associated with abandoned mine sites. The bill as written provides limited opportunities for public comment on proposed projects, but final approval of a Good Samaritan permit lies with the Federal government. Do you believe that the current legislation provides the appropriate level of public engagement in the approval process?

   a. Please describe your recommendations to expand the role of States, Tribes, and other local stakeholders in the approval process for Good Samaritan permits.

Western Governors agree that states and local communities have a vested interest in the outcome of Good Samaritan projects. States and local communities also have the greatest understanding of the unique physical and environmental factors present at abandoned hardrock mine sites, and consequently, how best to manage them. States have the management capability to determine which entities should be eligible for Good Samaritan status and approve Good Samaritan plans.

States have thoroughly demonstrated this management capacity. Many state agencies administer elements of the Clean Water Act, regulate financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. As they execute these functions, states also demonstrate their competence to collect, consider and integrate public input into decision-making processes. While the current legislation provides limited opportunities for the EPA to solicit public input, a role for states in the selection of Good Samaritan entities and approval of remediation plans would involve facilitating public input processes for proposed projects within their boundaries under state law. Ultimately, successful environmental management systems depend on robust public engagement processes to ensure community support, and states are ideally situated to manage such processes.
Senator MERKLEY. Thank you all for your expertise. We are going to turn to questions now, and I will jump right in, followed by Senator Lummis, followed by Senator Capito. Great to have you.

I am familiar with a site in Washington State called Holden Village. It is a former copper mining, primarily copper mining camp, and is now a Lutheran retreat center. And when I was there more than a decade ago, I noticed bulldozers at work and asked what was going on. They said, well, they are trying to figure out how to cap the tailings, specifically the challenge of cyanide trickling out from the tailings.

Cyanide was used to dissolve the metals in a lot of hardrock mining. How big of an issue is cyanide leaching into our streams and affecting the health of streams? Chris Wood, I thought you might have an answer for that.

Mr. WOOD. Cyanide is pretty bad for fish. It is not alone in terms of the toxins that are caused by abandoned mines. It is zinc, lead, cadmium; it is the alphabet soup that you described, Senator Lummis, earlier for this Committee, it is applicable to how many negative effects can happen when minerals oxidize, they are exposed to oxygen, and they leach acid mine drainage into rivers.

It is not just bad for fish, it is bad for people, too. As I mentioned, half of the abandoned mines in the West, it is estimated, negatively affect drinking water supplies. So it is not just harming fish, it is harming people as well.

Senator MERKLEY. The stream that ran through that village was completely dead, no fish, nothing lived in it. So it remains in my mind how important it is to be able to do cleanups.

I want to be clear, and I will ask you this, Lauren Pagel, under this legislation, this would not allow people to go in and kind of reprocess tailings for further extraction, reapply any sort of additional chemicals to dissolve metals. In other words, this is not protection for kind of going in and re-mining, but this is truly about cleanup.

Ms. PAGEL. It is. That is a really important distinction between mining and Good Samaritan cleanup that this bill makes.

Senator MERKLEY. Great.

I am going to turn this over to Senator Lummis.

Senator LUMMIS. Thank you, Mr. Chairman.

Mr. Wood, congratulations on the good work of Trout Unlimited to advocate for our clean waters and our fisheries. I note that in August, Trout Unlimited, with six other conservation organizations, submitted joint comments with recommendations for the interagency working group regarding meaningful Good Samaritan proposals to remediate historic AML sites, and reprocessing mine tailings and waste.

The comments did highlight the Clean Water Act and CERCLA as two primary barriers to making progress on AML reclamation. Can you describe how targeted conditional liability protections in reclamation efforts can help speed up the progress on cleanup of legacy abandoned mine lands?

Mr. WOOD. Yes, ma’am. Thank you for the kind words about Trout Unlimited. We appreciate that.

As I mentioned in my testimony, one of the challenges, and this puts me in a very difficult situation, because there is not a stronger
advocate for the Clean Water Act than Trout Unlimited, fishing need cold, clean water every day. Trout do, anyway. The challenge, though, is that as vital as that law is, it is meant to stop people from polluting. It doesn’t enable people to clean up the effects of pollution.

As I mentioned, we have the ability to go in, with a lot of these tailings, for example, the solutions are fairly straightforward. They are minor engineering problems in some of these places. We are not talking about Superfund sites. You dig a hole, you line the hole, you bulldoze the tailings into the hole, put an impermeable liner over it, put parent material over it, dig a French drain, and then you can walk away from a lot of these sites.

But we can spend a couple hundred thousand dollars to do that kind of work on a site, and to bury these tailings. And we might be able to get to 95 percent, 98 percent of Clean Water Act standards. But it might be another $2 million, you might need to do a constructed wetland to get to 100 percent. Once you implicate, once you start dealing with moving water, running water, it implicates the Clean Water Act. And you are required by law to get 100 percent, or we would become a potentially responsible party in the Government’s eyes, and liable to citizen suit from anyone.

So it is a wonderful law; we don’t want to change the Clean Water Act in any way, shape, or form. We just want to demonstrate the prowess of communities, of Good Samaritans to clean up these abandoned mines and to do so in a manner that makes the environment materially better, and then hopefully we can work with Congress to take this idea to scale.

Senator LUMMIS. Thanks for your willingness to participate and put your financial wherewithal behind these projects.

Mr. Ogsbury, how applicable are pilot projects for low risk AML sites like those in my home State of Wyoming? And is there room to implement Good Samaritan remediation more broadly?

Mr. OGBURY. Absolutely. Thank you, Senator Lummis. Again, there are tens of thousands of hazardous abandoned mine sites across the Nation. We are looking, under this legislation, at just 15 pilot projects. And we think that would be a great start. We want to learn from these projects and maintain momentum.

The best way to build upon these pioneering projects is to ensure that we apply lessons from the projects to future Good Samaritan comprehensive legislation. Western States are an excellent laboratory for testing this system. Rather than contemplating an extension of the pilot projects, we would hope and prefer that the lessons learned from the pilot program be used to inform comprehensive legislation.

In the meantime, these pilot projects will help us further understand how to best design projects to make them both attractive to Good Samaritans while ensuring that environmental cleanup quality is maintained. We will also be able, hopefully, to make sure that western States have a leadership role in the design and implementation of the program.

Senator LUMMIS. Thank you.

My last question is for Director Cabrera. Can these permits be designed in a way so they are limited in scope to make sure that
no one can mine, explore, conduct other activities outside the scope of the permit under this legislation?

Mr. Cabrera. Senator Lummis, absolutely, the EPA will have the ability to set forth specific permit conditions to a particular pilot project. And as far as I read the legislation, EPA is going to have broad authority to write permit conditions. As long as the applicant agrees to those permit conditions, the permit may limit many of the activities that occur on the site in terms of scope and ability.

The law itself is very narrow and only allows for very narrow reprocessing of materials without additional mining. So, the answer to your question is yes.

Senator Lummis. Thank you all.

Mr. Chairman, I yield back.

Senator Merkley. Thank you.

Director Pagel, in your testimony you were mentioning several specific things that you would like to see in the bill. It wasn't clear to me if you were commenting on points that have already been incorporated or points that you think still need to be incorporated.

Ms. Pagel. These are points that we think still need to be incorporated. We are looking forward to working with the sponsors, you all on the Committee, and Chris and others, to make sure that any Good Samaritan legislation is really protective. We are working directly with communities on the ground who have been impacted by mine waste or mining. We just want to make sure that downstream communities, especially indigenous communities, are adequately protected and that there is not some unintended consequences.

Earthworks, Chris was reminding me, that the first time we testified together on this issue supporting Good Samaritan liability relief was 2006. Not that much has changed except maybe now I wear these reading glasses.

The liability relief that Good Samaritans want is something that we support and want to work to make sure that any bill that passes gives that liability relief but also really protects water and communities on the ground.

Senator Merkley. Thank you.

Director Wood, it has been mentioned that you have been engaged in this conversation for a long time. The earlier testimony said this was first looked at in the early 1990s.

What has been the primary concern that has prevented this from becoming law previously?

Mr. Wood. Senator, I think it goes back to something I suggested earlier. The Clean Water Act and CERCLA are two of our most important environmental laws. I think people have been concerned that we would somehow use this effort to weaken those bedrock environmental laws.

Another issue is that people were concerned about the scope and the scale of permitting a Good Samaritan program writ large. And while I agree with Jim that we do need to do that, ultimately the beauty of this bill is that it is 15 pilots over 7 years. So we can actually learn from the work over the next 15 years, then take those lessons learned and apply it more broadly.

Senator Merkley. I am trying to remember the details, and I am not remembering them, of a previous environmental accident. And
I wasn’t sure if it happened during attempted remediation, but I think it was a mine that was full of water that was contaminated that was released into a stream and caused some devastation. Can you remind us of that? How do we avoid something like that happening again?

Mr. Wood. That was the Animas, I mean, it happens every day, to be clear. It is happening on tens of thousands of abandoned mines. But on that one, there was a cleanup, and the contractor to the EPA that was cleaning up some big adits that were plugged, and they gave. It is important that that kind of a cleanup, we are talking about lower risk projects, not projects that would qualify for Superfund cleanup. These are mostly tailings, piles, or draining adits, which are much smaller in scope and scale.

Senator Merkley. Ms. Pagel, is that the kind of thing that is in your mind when you are concerned about potential downstream impacts?

Ms. Pagel. Yes. There is always, I think the focus on low risk projects and pilot projects is great, and will hopefully mitigate anything like the Gold King Mine disaster in Colorado happening. But things do go wrong. And just making sure that there is adequate protection if water quality is made significantly worse than it was previously is something that we remain concerned about, and we want to make sure that there are adequate protections to ensure that doesn’t happen.

Senator Merkley. Director Wood, you mentioned that that particular disaster involved unplugging something. I didn’t catch what it was you were talking about.

Mr. Wood. Adits, holes, they were doing some drilling to relieve pressure from these adits. I don’t exactly know the details of what happened there. But it was a much more larger scale engineering project than the 15 pilots that are contemplated in this bill.

Senator Merkley. Director Ogsbury, if we do nothing, if we don’t have this bill, is it fair to say that very few remediation projects will take place?

Mr. Ogsbury. I believe that is so. As Chris has mentioned, we have two big impediments, which are funding and liability protection. Congress has started to address the funding issue. That can really be unlocked with the Good Samaritan protections anticipated by S. 3571.

I would add, we were talking about the Gold King mining disaster. Although that wasn’t the kind of site that would be subject to this legislation, it did demonstrate to the public the dangers that these mines present, and the acute economic impacts. Fisheries were closed, recreational, the Animas came to a standstill. It is a very river dependent economy in that area. I know fishermen were loathe to get back because of the contamination.

But more typically, acid mine drainage has diffuse economic impacts over long periods of time. Contaminated water is more expensive for municipalities to clean up, to treat to drinkable water standards. Agriculture producers suffer reduced crop yields when they are irrigating with contaminated water. And it also harms the aquatic ecosystems essential to good fishing and hunting and birding.

So I would hope that inaction is not an option.
Senator Merkley. Director Ogsbury, just to be absolutely clear, these are abandoned mines. This is not a situation where a company that has been involved in a mine still has liability, still is reachable, could transfer a mine to a non-profit and avoid being responsible for the challenges they may have created?

Mr. Ogsbury. That is my understanding of the legislation, yes, sir.

Senator Merkley. Is that everyone’s understanding of the legislation?

Mr. Wood. Yes.

Mr. Ogsbury. Yes.

Senator Merkley. Senator Kelly.

Senator Kelly. Thank you, Mr. Chairman.

Before I begin, I ask unanimous consent to enter into the record 12 letters of support for this legislation from States, NGOs, and advocacy groups.

Senator Merkley. Without objection.

[The referenced information is provided at the end of Mr. Cabrera’s answers to questions for the record.]

Senator Kelly. Director Cabrera, thanks again for joining us today. I want to ask you to expand upon your testimony. You mention that 120 stream miles are considered impaired under the Clean Water Act due to abandoned mine sites.

How many of these streams are tributaries of the watersheds that provide most of Arizona’s drinking water, like the Colorado River, the Salt River, the Verde River, and the Gila River?

Mr. Cabrera. Senator Kelly, thank you for the question.

Of the 120 impaired stream miles, 93 of those miles are in watersheds of these major Arizona rivers. While none of these stream miles are directly used for drinking water, they are all in the watershed. And as the drought continues, and the assimilative capacity of our rivers and streams is reduced, in other words, the flow is reduced so its ability to accept pollution contamination is also reduced, it becomes a much, much larger problem for all of our limited drinking water sources.

That is why the Arizona legislature a number of years ago produced a joint resolution led by Representative Griffin to recommend to Congress that we pass abandoned mine legislation.

Senator Kelly. So, 93 out of 120 of these streams go into these rivers where drinking water comes from. That is about 78 percent of those. That is significant.

Can you briefly discuss the risks posed by abandoned mine sites to our groundwater aquifers? Are there any sites which pose a particular acute risk to groundwater which is used for drinking water?

Mr. Cabrera. Thank you, Senator.

One thing to understand about the State of Arizona is that every drop of aquifer is considered a drinking water source. That is actually very rare in the United States. But we are a desert region, and water is very precious. So for the most part for us, groundwater equals drinking water.

One example in the State of Arizona is a site that was studied by the Arizona Department of Health Services because it had high levels of metals in groundwater in a rural location where lots of private individuals were using that groundwater as a primary
drinking water source. That particular site we are working with, and we are trying to address the surface water contamination that seeps into the groundwater sources.

So, it is a very real risk to our aquifers and groundwater. Again in the State of Arizona, all of our groundwater for the most part is considered a drinking water source.

Senator KELLY. It sounds like a serious risk to our drinking water. And as I had talked about previously, this is going on at a time when we are preparing to do more with less water from the Colorado River. So we need to ensure that other sources of drinking water, our groundwater, are protected.

Director Cabrera, I understand that ADEQ has identified some of the most at risk orphan mine sites and is working with the landowners on remediation. Can you explain how CERCLA and the Clean Water Act pose challenges when working with landowners to address these abandoned sites?

Mr. CABRERA. Yes, Senator. For many abandoned mine sites there are no existing responsible parties for the contamination. Instead, there are often private landowners without means or knowledge to address the issue, or the sites are on public lands. Private landowners in particular often bought without knowledge, a legacy site, and they never created the problems that were created a century ago.

Why that is problematic is because under the Superfund law, CERCLA, which we have mentioned, there are four types of potentially responsible parties. There are current owners and operators, there are past owners and operators, there are generators and parties that arrange for the disposal or transport of the hazardous substances, and then there are transporters of hazardous waste that selected the site where the hazardous substances were brought.

In a 2015 report on cleanup of abandoned mine lands, the Congressional Research Service states that at least two, in my opinion more likely three, of those categories might apply to Good Samaritans or innocent landowners who attempt to clean up an inactive or abandoned mine. CERCLA liability, in particular, we have to understand that it is retroactive.

So parties, any of those four potential responsible party categories, are held liable for acts that happened before the laws even existed. The liability is joint and several, which means that any one potentially responsible party can be held liable for an entire cleanup, and it is strict. A responsible party cannot simply say that they were not negligent or that it was not their doing.

So, this poses a heavy burden. These laws do a really good job of holding people accountable in the today, but what they do is that they form barriers and obstacles where responsible parties who actually did the contamination are no longer available.

So this set of liability provisions poses an asymmetric risk for an innocent landowner or a private party or an NGO or a volunteer or a State when the land in question is worth a fraction of the cost of the cleanup. And so the risk/reward becomes very difficult, and most parties simply choose to do nothing.

Senator KELLY. Thank you. Thank you for your testimony.
Mr. Chairman, I have some more questions I want to submit for the record.

Senator MERKLEY. Absolutely, without objection.

Senator KELLY. Also, I want to thank everybody for being here today.

Chris, nice to see you again.

I appreciate everybody showing up to have this issue addressed. It is important we get these cleaned up. The water situation we have in the State is challenging, to say the least. We have to protect our groundwater from the runoff from these hardrock mines.

Thank you, Mr. Chairman.

Senator MERKLEY. Thank you very much, Senator Kelly. Thank you for your hard work to address this really critical challenge. I know in Arizona, as you mentioned, every drop counts. And it is an issue throughout our set of western States, as demonstrated by all the Senators who have been engaged in this conversation. I appreciate your contributions and efforts.

Thank you to all of our witnesses for being here today and for bringing your expertise to bear.

I would like to ask unanimous consent to submit for the record materials that relate to today’s hearing.

Hearing no objection, so ordered.

[The referenced information follows:]
September 27, 2022

Subcommittee Chairman Jeff Merkley  
410 Dirksen Senate Office Building  
Washington, DC 20510

Subcommittee Ranking Member Roger Wicker  
456 Dirksen Senate Office Building  
Washington, DC 20510

RE: September 29, 2022, hearing on S. 3571, Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Mr. Chairman and Ranking Member,

Please accept for the official record Coeur Mining’s support for S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

Headquartered in Chicago, IL, Coeur Mining (NYSE:CDE) is a U.S.-based, well-diversified, growing precious metals producer with four wholly-owned operations: the Palmarejo gold-silver complex in Mexico, the Rochester silver-gold mine in Nevada, the Kensington gold mine in Alaska and the Wharf gold mine in South Dakota. In addition, Coeur wholly-owns the Silvertip silver-zinc-lead development project in British Columbia and has interests in several precious metals exploration projects throughout North America. Coeur employs approximately 2,100 people. Our purpose statement is “We pursue a higher standard.” Holding ourselves to a higher standard means, among other things, we are committed to protecting the environment. Our company prioritizes our responsibility to contribute to clean air, clean water, and the protection and enhancement of the land we use or disturb to produce the metals crucial to everyday life.

For approximately the first 150 years of our country’s existence, Federal law imposed few if any environmental standards or guidelines on the hardrock mining industry, or any other extractive industries, to guard against future environmental damage. The companies that owned and operated these mines are no longer in existence, resulting in thousands of abandoned mine sites—primarily in the western United States. Unfortunately, the images of mining from 150 years ago are the perception many have about today’s hardrock mining industry. The modern mining industry is far different from what many perceive as the mining industry of days gone by. Today’s mining industry is safe, efficient, responsible, and on the cutting edge of technology and innovation. All Federal environmental laws apply to modern mining on Federal lands today as they have for decades. Virtually all modern mining companies strive to leave our sites better than we found them.
The companies and people who left the scars of abandoned mines are generally long gone and most of our abandoned mines on Federal lands do not have a "responsible party" under current law. Today's industry is attempting to help remedy these legacy sites through new policy directives and opportunities for today's industry to help clean up the sites left from historic mining.

Modern environmental laws, reclamation standards, clean water requirements, and financial assurances all ensure that modern mining projects do not leave behind abandoned mines that pose safety and environmental hazards. However, Coeur and others in the industry believe we should do more, and we have been advocating with conservation stakeholders on our side to find a way to allow for Good Samaritan actors to invest in the cleanup of sites where they otherwise have no liability or obligation to do so. S. 3571 is the result of all of our efforts.

Coeur supports S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022, introduced by Senators Heinrich and Risch and supported by a long list of bi-partisan Senators. This legislation has been years in the making with conservation and industry coming together to craft a pilot program that is an important step forward in addressing this serious issue. S. 3571 importantly opens the opportunity for industry to begin the long overdue need to address abandoned mine environmental damage in the United States.

Crafted as a pilot program, S. 3571 authorizes a Good Samaritan permitting program that allows industry, or others, who otherwise are not owners or operators of these sites, to invest in and carry out remediation activities at these sites. The 15 projects could occur on Federal, State, Tribal, or private lands with an achievable standard of lowering environmental risk and improving water and soil quality and to improve protection of human health. While the costs of the remediation actions can be offset by reprocessing of previously mined material, a Good Samaritan would otherwise be responsible for the costs of the remedial actions.

The program will be administered by the EPA and the respective federal land management agency when occurring on federal lands. These projects are subject to the National Environmental Policy Act (NEPA) and federal agency oversight and applicant requirements ensure that approved Good Samaritans are qualified to undertake the projects and will improve environmental conditions at these abandoned mine sites and leave them safer and cleaner.

Critical to this compromise are the liability protections for Good Samaritans. The conditional relief from liabilities under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is vital to ensuring that we do not punish entities who step forward to address these issues that the Federal Government has been largely unable to address for decades. The liability protections are the result of hard-fought negotiations and a cornerstone to agreements between industry and conservation stakeholders. Without liability protections, it is difficult to foresee participation in such a program by non-Federal entities.

While the U.S. has over 140,000 abandoned hardrock mining features, the bulk of these sites are primarily public safety concerns. However, approximately 22,500 of these sites pose environmental hazards and often threaten water quality. The hardrock mining industry possesses the expertise, the experience, the people, and the equipment to address environmental needs at these abandoned sites. Often times, these sites occur in close proximity to existing mining operations which further facilitates the ability of the mining industry to undertake Good Samaritan remediation projects.
We are hopeful that one day the provisions of Section 40704 of the Infrastructure Investment and Jobs Act, establishing a hardrock Abandoned Mine Lands program, and a Good Samaritan program can be merged in a fashion to bring the full force of Federal resources and industry expertise to bear in remediating abandoned mines in the United States. We urge the Committee to fully consider the years of hard work and earnest efforts in crafting this legislation and are hopeful that this initial hearing will ultimately result in final passage to authorize this important program.

Coeur Mining stands ready to assist the Committee in any way to further the advancement of S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

Thank you for your consideration.

Mitchell K. Teich
September 29, 2022

Chairman Jeff Merkley
Senate Committee on Environment and Public Works,
Subcommittee on Chemical Safety, Waste Management, Environmental Justice and Regulatory Oversight
410 Dirksen Senate Office Building
Washington, DC 20510

Chair Tammy Duckworth
Subcommittee on Fisheries, Water and Wildlife
410 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Roger Wicker
Senate Committee on Environment and Public Works,
Subcommittee on Chemical Safety, Waste Management, Environmental Justice and Regulatory Oversight
456 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Cynthia Lummis
Subcommittee on Fisheries, Water and Wildlife
456 Dirksen Senate Office Building
Washington, DC 20510

(submitted via e-mail)

Re: The Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571)

Dear Chairman Merkley, Ranking Member Wicker, Chair Duckworth, Ranking Member Lummis, and members of the subcommittees:

The American Exploration & Mining Association (AEMA) would like to thank you for holding this hearing on legislation to enhance the clean-up of historic, pre-regulation abandoned mines. We strongly support The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 (S. 3571) and urge your support as well.

AEMA is a 127-year-old, 1,400-member national association representing the minerals industry with members residing in 46 U.S. states, seven Canadian provinces or territories, and 10 other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or employed by small businesses. AEMA has been a strong supporter of Good Samaritan legislation and has testified in support of such legislation before Senate and House committees.

The Government Accountability Office recently completed an investigation finding that there are at least 140,000 abandoned hardrock mine features, of which 22,500 pose or may pose environmental hazards, and potentially more than 390,000 abandoned hardrock mine features on federal land not captured in federal databases. The vast majority of these are the result of pre-
regulation practices, which are effectively eliminated by today’s comprehensive suite of environmental laws and regulations applicable to the U.S. mining industry. Today, hardrock miners, conservation groups, state governments and others are ready to remedy many Abandoned Mine Lands (AMLs) but cannot do so due to liability concerns.

Entities that have no legal or financial responsibility or connection to an abandoned mine – true Good Samaritans – want to volunteer to remediate many of these sites. Unfortunately, under the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), liability for these sites would likely transfer to Good Samaritans, leaving them vulnerable to prosecution or litigation under the CWA or CERCLA, even though they did not create the pollution in the first place and have made successful improvements to water quality.

For more than 20 years, AEMA has worked with Trout Unlimited, the National Mining Association and others to craft bipartisan, compromise legislation that strikes the right balance that this issue requires. The pilot program created by S. 3571 includes conditional liability relief for Good Samaritans, enabling AML cleanups to move forward while holding Good Samaritans accountable to the terms of the permits, enforceable by the EPA and federal land management agencies.

The broad coalition that helped negotiate and introduce S. 3571 is also reflected in the strong bipartisan support in the Senate. We commend the leadership of Senators Heinrich and Risch in introducing S. 3571, as well as the 16 other cosponsors for their support.

As you are no doubt aware, the Infrastructure Investment and Jobs Act (IIJA) included Section 40704, which established a new fund to expedite AML cleanups. However, without legislation like S. 3571, the CWA and CERCLA will remain as obstacles to full implementation of the IIJA by blocking Good Samaritans who have the desire, expertise, and financial resources to begin cleaning up many of these sites today.

It is important to note that while we believe in the concepts contained in S. 3571, it is, after all, a pilot bill, authorizing just 15 projects, with a sunset of seven years. This is an opportunity to road test these concepts, to “walk before we run.” After seven years, Congress will retain the authority to review the entire program, along with the ability to tweak, overhaul, expand, or let it expire – based on the results. S. 3571 offers a prudent, low-risk, scalable approach to a pressing problem.

For these and many more reasons, AEMA respectfully encourages the members of these subcommittees to support S.3571. Thank you for your consideration.

Sincerely,

Mark Compton
Executive Director
October 27, 2022

The Honorable Jeff Merkley
U.S. Senate
231 Hart Senate Office Building
Washington, DC 20510

The Honorable Tammy Duckworth
U.S. Senate
234 Hart Senate Office Building
Washington, DC 20510

The Honorable Roger Wicker
U.S. Senate
555 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Cynthia Lummis
U.S. Senate
124 Russell Senate Office Building
Washington, DC 20510

Dear Chairs Merkley and Duckworth, and Ranking Members Wicker and Lummis,

The Environmental Council of the States, the national organization of the states’ top environmental leaders, is encouraged by and enthused about Senate Bill 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. This bipartisan proposal will spur environmental remediation and source water protection, providing long-needed incentives for states, tribes, NGOs, and others involved in the cleanup of abandoned hardrock mines, while retaining important safeguards.

As outlined by ECOS Member Misael Cabrera of the Arizona Department of Environmental Quality in his testimony before the U.S. Senate, addressing Good Samaritans’ exposure to liability via the pilot program proposed in Senate Bill 3571 is a critical step in allowing states, tribes, new owners, non-profits, and volunteers to accelerate clean-ups at abandoned hardrock mines. While the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act contain joint and several liability as well as other provisions that are helpful in holding responsible parties liable, these same provisions can create barriers to pre-regulation abandoned hardrock mines where the responsible party no longer exists. And, given that the U.S. General Accounting Office reports that about 22,500 abandoned mine features across the U.S. “pose or may pose environmental hazards,” this legislation, especially if coupled with funding of Section 40704 of the Infrastructure Investment and Jobs Act for abandoned hardrock mine reclamation, could result in significant and lasting improvements for our watersheds.

ECOS encourages you and your colleagues to advance this important legislation, and to consider additional clarifications. For example, the bill should ensure coordination with state priority programs as sites are selected for the pilot and determinations of water quality progress are made. States are often best equipped with local knowledge of these sites and their impacts and will be essential partners in the process. The Good Samaritan policy should be crafted narrowly in order to avoid setting precedent beyond the scope of the legislation. The Committee should clarify that states will not assume liability by default for unintended consequences of any Good Samaritan efforts.

ECOS appreciates this important legislation, a fitting tribute to bipartisan progress as America celebrates the Clean Water Act’s 50th anniversary and recommits to an even cleaner future. If you would like to discuss this further, please feel free to contact me at bgumbles@ecos.org.

Sincerely,

Ben Grumbles
ECOS Executive Director

Cc:
The Honorable Thomas R. Carper
The Honorable Shelley Moore Capito

Myra Reece
South Carolina Department of Health and Environmental Control
ECOS President

Chuck Carr Brown
Louisiana Department of Environmental Quality
ECOS Vice President

Liesl Eichler Clark
Michigan Department of Environment, Great Lakes, and Energy
ECOS Secretary-Treasurer

Todd Perfitt
Washington Department of
Environmental Quality
ECOS Past President

Ben Grumbles
ECOS Executive Director
September 27, 2022

The Honorable Jeff Merkley, Chairman
The Honorable Roger Wicker, Ranking Member
United States Senate Subcommittee on Chemical Safety, Waste Management, Environmental Justice
and Regulatory Oversight
The Honorable Tammy Duckworth, Chairman
The Honorable Cynthia Lummis, Ranking Member
United States Senate Subcommittee on Fisheries, Water, and Wildlife

S.3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

I am writing on behalf of the Mining and Metallurgical Society of America (MMSA) in support of S.3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

Abandoned mine lands represent a significant and well known problem that poses potential visual scars, safety hazards and in some cases environmental issues, throughout the United States. It is estimated that there are potentially more than 390,000 abandoned hard rock mine features listed in federal databases, the vast majority of which are not being addressed in any manner whatsoever.

There is a strong sentiment within the mining industry that significant improvement to some of these sites can be realized through the efforts of Good Samaritans. The mining industry in particular has unique skills, experience and resources related to mine reclamation and mitigation of mining impacts that could be brought to bear in addressing abandoned mine lands. The mining industry, as represented by mining companies, contractors, professional organizations and individual professionals, is highly motivated to assist with meaningful work in mitigation of these legacy abandoned mining sites.

Unfortunately, meaningful efforts by Good Samaritans towards remediation of these sites are substantially limited or entirely prevented by concerns regarding liability risks. These include concerns that liability, such as under the Clean Water Act and CERCLA, would transfer to Good Samaritans undertaking remediation works, even though they were not responsible for the abandoned mine land site in the first place. The limits on remediation of abandoned mine land sites that these legacy liability risks cause is difficult to overstate.

S.3571 represents meaningful progress in addressing the issue by establishing a pilot program for abandoned mine lands remediation. The pilot program is limited in scope to a small number of low risk “orphaned” projects, which currently have no responsible owners or operators. The program includes
robust review of application, approval, project progress reporting and completion processes. These processes include public comment and engagement of other interested parties. No mineral exploration, processing, beneficiation or mining are allowed under the legislation. Reprocessing of materials is allowed only under certain conditions and only to help defray costs of the remediation.

Importantly S.3571 provides narrow liability exemptions for the pilot projects only if the Good Samaritan is “undertaking remediation activities identified in, carried out pursuant to, and in compliance with a Good Samaritan permit.”

This legislation represents an opportunity for all parties involved to demonstrate successful abandoned mine lands reclamation efforts under a carefully crafted pilot program that should protect and improve the environment. The MMSA strongly endorses this legislation. We thank Senators Risch and Heinrich for introducing the bill and the many bipartisan cosponsors for their support of the bill.

MMSA is a professional organization of senior-level minerals industry professionals with expertise in mining, metallurgy, geology, finance, law, and all related disciplines that support Environmental, Social, and Governance (ESG) issues in the extractives industry. Since its inception in 1908, MMSA has offered guidance on policy issues ranging from protection of workers and investors to the responsible development of mineral resources on public lands. MMSA was instrumental in the establishment of the former U.S. Bureau of Mines (USBM). MMSA continues to testify before Congress, advise government agencies, and convene multi-stakeholder forums such as the Minerals for a Green Society Symposium, the ongoing Abandoned Mine Land Summits, and a new informational webinar series on critical minerals. Videos and reports for conferences and webinars are available on the MMSA Web site at https://www.mmusa.net.

MMSA members are available to provide technical information and context as needed and are ready to support your pursuit of bipartisanship on policies that will ensure Made in America also means Mined in America, Processed in America, and Recycled in America.

Thank you again for the opportunity to comment on these important interrelated issues.

Sincerely,

Mick Gavrilovic
MMSA President

A 501(c)(6) professional organization committed to advancing scientific knowledge, fostering collaboration, and promoting responsible mineral resource development.
October 12, 2022

Honorable Senator Jeff Merkley
Honorable Senator Roger Wicker
Honorable Senator Tammy Duckworth
Honorable Senator Cynthia Lummis
U.S. Senate Committee on Environment & Public Works
Chemical Safety, Waste Management, Environmental Justice,
and Regulatory Oversight and Fisheries, Water, and Wildlife Subcommittees
410 Dirksen Senate Office Building
Washington, D.C. 20510
(202) 309-2008

Submitted via email to: Kenneth_Martin@epw.senate.gov

Testimony RE: S. 3571, “Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022” Must Be Improved to Ensure Cleanup Goals Are Achieved and Communities and Headwaters are Protected

Dear Honorable Senators Merkley, Wicker, Duckworth, and Lummis:

Please accept the following written testimony regarding “S. 3571 - Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022,” that was heard by the U.S. Senate Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight and the Subcommittee on Fisheries, Water, and Wildlife held September 29, 2022.

Hardrock mining has left a legacy of pollution across ancestral, public, and private lands and waters throughout the western United States. According to the U.S. Environmental Protection Agency (“EPA”), mining has polluted more than 40 percent of western headwaters.¹

Before I discuss our specific concerns with S. 3571, I’d like to cover pressing issues with the current mining law and regulations that urgently need to be addressed in order to end the cycle of pollution from inadequately regulated hard rock mining.

Unfortunately, mine pollution is not a relic of the past—perpetual pollution from mines is still permitted under current rules.² Cleaning up and preventing further pollution to protect communities

² Bonnie Geyer, Polluting the Future, Earthworks (May 1, 2013) available at https://earthworks.org/resources/polluting_the_future/
and water resources is a pressing need, especially with the aridification of the west. Water resources are becoming scarcer and are over-appropriated. Water that is lost to disruptions of hydrologic balances or pollution further strains ecosystems and our water systems, which are at a breaking point.

Center for Biological Diversity ("Center") has joined efforts calling for legislative and administrative reforms that will address and prevent more pollution from hardrock mines. Urgent recommendations for reforms include:

- Establishing a fully Funded Hardrock Mine Reclamation Program that would be paid for with reclamation fees, similar to what the coal mining industry pays.
- Establishing strong responsible mining standards that include financial assurance requirements to reduce the risk and consequences of legacy pollution, decrease the likelihood of catastrophic events, such as tailings impoundment failures, and protect taxpayers from companies that go bankrupt and fail to reclaim the mine site.
- Requiring the Environmental Protection Agency ("EPA") to review and revise their financial assurance requirements for the hardrock mining industry pursuant to Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

One of the greatest challenges is lack of funding to ensure there is appropriate staff and resources for successful cleanups at the tens of thousands of abandoned mine sites. Significant funding is needed to comprehensively inventory and prioritize abandoned mines and to ensure efforts addressing this large-scale pollution problem result in positive and long-term beneficial outcomes.

We greatly appreciate Congress taking an important step in creating our nation’s first ever fund dedicated to hardrock AML cleanup in Section 40704 of the Infrastructure and Investment Jobs Act. It is critical that the FY23 budget appropriates funds authorized to implement this vital program. While this fund is a vital start to address the problem, a permanent royalty and reclamation fund is still needed to address the problem of hardrock abandoned mine lands ("AMLS").

Hardrock mine cleanups are often complex and expensive. Yet, the hardrock mining industry pays no such fee. The Surface Mining Control and Reclamation Act requires coal mining companies to contribute fees to a cleanup fund, which has successfully financed coal mine cleanups across the

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5 See White House Fact Sheet on EO 13990, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/20/fact-sheet-list-of-agency-actions-for-review/.

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country, though more funding is needed. Only an independent, dedicated funding source from a hardrock royalty and reclamation fee, analogous to coal’s Surface Mining Control Reclamation Act AML program, will create the significant improvements needed to address the hundreds of thousands hardrock AMLs nationwide.

Areas Where Improvements Are Needed To S. 3571

We support efforts to cleanup pollution from pre-1980 abandoned mines, as S. 3571 strives to do. However, as currently drafted the bill creates inadvertent loopholes that could be misused and potentially exacerbate risks to drinking and other waters by undermining the intent of the Clean Water Act (“CWA”) or CERCLA. It is important that Good Samaritan policies ensure that Americans can seek justice under the law if a cleanup project goes wrong and protect against the abuse of corporate structures that could allow companies to inappropriately obtain waivers of liability or otherwise evade funding cleanup.

The following discusses five areas that need to be improved to avoid unintended consequences and potential inadvertent misuse or abuse.

A. Definitions Need Refining to Prevent Misuse, Abuse, or Other Complications

The underlying premise of the Good Samaritan bill S. 3571 is that it offers “Good Samaritans” a waiver of liability from complying with the CWA and the CERCLA, while undergoing a mine cleanup and reclamation.

There are at least four definitions that should be more explicitly defined to prevent abuses of these liability waivers and avoid other complications.

The definitions for a “Good Samaritan” and “Responsible Owner or Operator” need to be more explicitly defined to capture additional permutations that could be used for entities to inappropriately obtain the benefits of being a “Good Samaritan.” As currently drafted, because the definition of “Responsible Owner or Operator” is tied to how this term is defined under existing laws, it sets up the scenario where responsible owners or operators (those with liability for the pollution) obtain the benefit of being an alleged “Good Samaritan,” thus clouding, if not evading responsibility for the existing pollution. Please see Section D. for further discussion of additional implications as well.

The third definition is “historic mine residue.” Calling pollution “residue” does not make sense and disguises the environmental problem that this bill seeks to address: abandoned mine pollution.

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8 S. 3571, Sec. 2(6).
9 S. 3571, Sec. 2(14).
10 “Cooperating Person” as defined in S. 3571, Sec. 2(4) is also problematic. As defined, a cooperating person is anyone identified by the Good Samaritan in the permit and relies on the problematic definition of “responsible owner and operator.” Please also see Subsection D for additional discussion as well.
11 S. 3571, Sec. 2(8).

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This definition also needs to be better defined so it captures the features and types of pollution that may be at an abandoned mine site and factors contributing to acid mine drainage, waste, or other pollution.

The fourth definition that needs constraints is what constitutes an “abandoned mine site.” As currently drafted, an “abandoned mine site” could be an “inactive mine site.” The inactive mine site is not abandoned, rather it is essentially idled or on hold and likely would have an entity that is accountable for the pollution and should be responsible for cleanup.

B. The Scope and Types of Projects Allowed Must Be Narrowed.

Investigative sampling, in the context of mine cleanup should be the process that assesses the degree and nature of the mine pollution, thus obtaining the information needed to determine what remediation efforts are appropriate for a particular site. The current definition, however, does not limit investigative sampling to activities that are directly tied to investigating water quality and the pollution conditions at a site. The bill does not provide sufficient protections to guard against investigative sampling permits and Good Samaritan permits from being used to reprocess material, allow for mineral exploration, prospecting, or beneficiation. This could create an exemption from the laws that otherwise apply to these mining related activities.

The bill also allows an unlimited number of these broadly defined “investigative sampling” operations. If this legislation is indeed a narrow and targeted pilot program, then the number of investigative sampling permits should be capped just as there is a cap for Good Samaritan permits.

Pilot projects need to be guaranteed low-risk. As currently drafted, the bill specifically allows for “plugging, opening, or otherwise altering the portal or adit of an abandoned mine site” on federal lands. This is precisely the type of remediation that resulted in the 2015 Gold King Mine environmental disaster, near Silverton, Colorado, that caused a release of toxic water into the Animas River.

C. Stronger Standards are Needed for Water Quality.

One of the main goals of mine cleanup is to address water pollution. The bill’s requirements largely apply to surface water quality, but not quantity. Including water quantity is important to ensure that cleanups do not result in unintended risks or impacts to flow rates, and consequently downstream

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12 S. 3571, Sec. 2(I).
13 S. 3571, Sec. 4(d).
14 See e.g. S. 3571, Sec. 4(d)/(4), Sec. 4(f)/(5)/(B).
15 See S. 3571, Sec. 4(d).
16 S. 3571, Sec. 4(d)/(1) (limiting the total Good Samaritan permits to 15).
17 S. 3571, Sec. 2(22)/(C) (excluding from the definition of remediation plugging, opening, or otherwise altering the portal or adit of the abandoned mine site only for state, tribal, or private lands; see also Sec. 4(e)/(9) (specifically contemplating that a Good Samaritan permit could include “remediation activity that requires plugging, opening, or otherwise altering the portal or adit of an abandoned mine site . . .”).

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uses, including fisheries. Nor does the bill include a requirement for ascertaining baseline conditions of groundwater at the time a permit application is submitted, nor protection of groundwater.

This leaves groundwater without any oversight or baseline for comparison at the conclusion of the cleanup, making it impossible to ensure that the effort is successful, and not merely resulting in moving the pollution elsewhere. This is critically important as groundwater and surface water are often connected. By failing to require a pre-and post-analysis and characterization of groundwater conditions in the context of mine cleanup, the goal of improving water quality conditions at the site would be difficult, if not impossible to evaluate, and even harder to achieve.

D. Liability Waivers Are Unnecessarily Broad and Encompassing

The requirement to obtain a CWA Section 404 permit from the Army Corps of Engineers for cleanups that would dredge or fill “waters of the U.S.” should not be waived. Instead, the bill should ensure that either the Good Samaritan permittee or the landowner (whether a federal land management agency or private party) obtains this important permit. Otherwise, a fundamental protection for “waters of the U.S.” would be removed and would allow waters to be turned into dry land, eliminating these waters from existence and from CWA protections.

Section 404 permits for a targeted environmental improvement project, like ones that would be proposed under a Good Samaritan permit, are not onerous or challenging to secure. These permits are routinely and frequently obtained for habitat restoration work in riparian or wetland habitats. These permits provide important protections, including ensuring there are no practicable alternatives that are less damaging to the aquatic environment, and assurances that the work will not result in an aggregate loss of wetlands. As such, these permits help ensure the efficacy of a proposed cleanup project and are fully consistent with the purpose and intent of this legislation.

As drafted, the liability waivers could inappropriately extend to entities that are responsible for creating the pollution. For example, liability waivers could be obtained by entities that under CWA or CERCLA are considered a “responsible owner or operator,” i.e. entities that have liability for the pollution, if they are not “financially able” to remediate pollution. This risks, and unintentionally incentivizes, the use of corporate shells and other legal structures to avoid liability and cleanup costs. As drafted, the bill would also grant a perpetual waiver of liability for a Good Samaritan and all “cooperating persons” “for any actions undertaken,” even if those actions cause increased pollution and harm to surrounding communities.

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16 See e.g. S. 3571, Sec. 4(c)? (not including groundwater quality or quantity in the baseline information).
18 See e.g. S. 3571, Sec. 4(e)(1)(B).
19 See e.g. S. 3571, Sec. 2(14) and Sec. 4(n).
20 See e.g. S. 3571, Sec. 2(4) and Sec. 4(n).
Additionally, perpetual liability waivers would be available to any Good Samaritan, recipient of an investigative sampling permit, and any “cooperating person” even if the activities do not result in complete cleanup—or even any amount of cleanup—or for activities that are not related to cleaning up the existing pollution.\(^{23}\) If “remediation” efforts worsened water quality outside the permit boundary, such as downstream or downgradient, the entity responsible for this pollution would be shielded from liability in perpetuity.\(^{24}\) The liability exemption for “investigative sampling” contains no requirement that the operator of an “investigative sampling” project ensure that the conditions do not worsen, and exempts these operators from liability even if their activities worsen water conditions.\(^{25}\)

Further, the bill at 42 U.S.C. 3(C) states “if a Good Samaritan or cooperating person violates the terms of a Good Samaritan permit and that violation results in surface water quality or other environmental conditions that are measurably worse than baseline conditions at the abandoned mine site, the Administrator shall—(i) notify the Good Samaritan and the cooperating person of the violation, and (ii) require the Good Samaritan or the cooperating person, as applicable, to undertake reasonable measures, as determined by the Administrator, to return surface water quality or other environmental conditions to the condition that existed prior to the violation.”\(^{26}\)

This provision ties any action by EPA for worsened surface water quality or other worsened environmental conditions to first, a permit violation, and second, that the permit violation caused a measurable worsening of surface water quality or other environmental conditions compared to the baseline.\(^{27}\) Where the first requirement, a permit violation (which is determined by the EPA Administrator alone), is not met, but there are worsened surface water quality or other environmental conditions, frontline communities, whether downstream, downgradient, or adjacent to abandoned mines, could be left without any recourse to address increased pollution or potentially continued existing pollution, as this section essentially waives the citizen suit provision of the Clean Water Act.

While the citizen suit waiver in this bill only holds if the permittee is not in compliance with the permit terms,\(^{28}\) this effectively shifts the ability to hold polluters accountable into the hands of agencies rather than impacted communities.\(^{29}\) In circumstances where the federal agencies determine the scope of the permit and also evaluate permit compliance, it is critical that there is

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\(^{23}\) See e.g. S. 3571, Sec. 4(n), Sec. 4(o), Sec. 4(m)(3)(A), Sec. 2(b) (defines “historic mine residue,” meaning “mine residue or any condition at an abandoned mine site resulting from hardrock mining activities.”’ thus a permit could be granted and liability waivers received for tasks like removing equipment even if that equipment is not related to the pollution at the site).

\(^{24}\) S. 3571, Sec. 4(n)(3).

\(^{25}\) S. 3571, Sec. 4(n)(2), Sec. 4(o).

\(^{26}\) S. 3571, Sec. 4(m)(3)(C).

\(^{27}\) This second criteria underscores the need for comprehensive baseline monitoring of environmental conditions, including groundwater quality and quantity. Without this information it would be impossible to determine if there may be any measurably worse condition. See e.g. supra Subsection C.

\(^{28}\) S. 3571, Sec. 4(m)(3)(A).

\(^{29}\) S. 3571, Sec. 4(n)(2), 4(m)(3).

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independent citizen oversight. Waiving citizen suit provisions, a bedrock provision of federal environmental laws such as the Clean Water Act, strips this critical accountability backstop and one of the strongest tools that clean water advocates have for holding agencies and polluters accountable.

Without the backstop of judicial review, there is a missing check for projects that would help ensure Good Samaritan projects are indeed low-risk. The long-standing Clean Water Act citizen suit provision for affected individuals and communities should be retained in any Good Samaritan policy. These provisions are critical for holding our government accountable and to allow affected persons to seek judicial review to protect the environment when the permitting agency fails to do so.

The bill also allows perpetual liability waivers to be extended to a “cooperating person,” which as noted, is so broadly defined, it could allow entities who are responsible and liable for the pollution to obtain waivers under this clause, rather than being held accountable under the CWA and CERCLA. The bill also allows Good Samaritan permits to be transferred. It is not clear why this provision would ever be needed. The provision is, however, particularly concerning given there are not sufficient sideboards to guard against the use of corporate structures that could allow an improper entity to obtain a Good Samaritan permit through a transfer or otherwise, and consequently obtain liability waivers.

Broad liability waivers are also unnecessarily extended to a host of activities and situations beyond what is tied to cleanup activities. The liability exemption for “investigative sampling” contains no requirement that the operator of an “investigative sampling” project ensure that the conditions do not worsen, and exempts these operators from liability even if their activities worsen water conditions.

The bill includes a “Force Majeure” loophole, granting broad immunity for Good Samaritan permit violations, including in an instance of a “public health emergency.” Such a waiver, as this bill would grant, certainly should not be applicable to CWA or CERCLA liability.

E. Public Review Is An Important and Necessary Aspect of Permits

Permits under this legislation should not prevent Americans from having their voices heard on projects that will directly impact them, through truncating the National Environmental Policy Act through mechanisms such as Categorical Exclusions. Additionally, any investigative sampling and Good Samaritan permit should obtain a Special Use Permit (“SUP”) from the applicable land management agency. We understand that the intent of the legislation precluding pilot projects that

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30 S. 3571, Sec. 2(4); see supra discussion in Subsection A.
31 S. 3571, Sec. 4(i).
32 See e.g. S. 3571, Sec. 4(f)(3)(a).
33 S. 3571, Sec. 4(i), (m)(3).
34 S. 3571, Sec. 4(f)(3).
35 The United States Forest Service special use regulations are at 36 C.F.R. Parts 251 and 261. The Bureau of Land Management special use regulations are at 43 C.F.R. Parts 2900 and 2920.
7 Center for Biological Diversity
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would require an Environmental Impact Statement is meant to ensure that projects are low-risk, thus the appropriate size, type, and scale for a Good Samaritan cleanup.⁶⁶ In practice, however, this provision could easily be misunderstood, with the approving agency believing that it is required to approve any and all pilot projects through an Environmental Assessment process, even if the project is not suitable for this level of environmental review and public engagement.

NEPA, the National Historic Preservation Act (NHPA),³⁷ and other laws require that federal agencies study the environmental and cultural impacts of their decisions, receive public input, including from all affected Tribal nations and communities, respond to that input, and select alternatives that best balance these considerations. Communities will depend upon these laws to learn more about Good Samaritan pilot project proposals and to suggest alternatives that will result in improved social and environmental outcomes. We urge S. 3571 to require and ensure compliance with the National Historic Preservation Act (NHPA) as well.

Conclusion

We appreciate the opportunity to identify areas of the proposed legislation that should be improved to ensure the goals and objectives of the Act are met. We look forward to working with the co-sponsors and Subcommittees to address the pollution problem abandoned mines have created while also ensuring solutions do not result in unintended risks and consequences.

Sincerely,

[Signature]

Allison N. Melton
Senior Attorney
Center for Biological Diversity
P.O. Box 3024
Crested Butte, CO 81224
amelton@biologicaldiversity.org

Encl. (2) April 21, 2022 sign-on letter from 33 organizations expressing concerns with and opposition to S. 3571 as currently drafted and technical attachment

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⁶⁶ S. 3571, Sec. 4(h)(A)(F).
⁷⁷ See 16 U.S.C. §§ 470 et seq.
April 21, 2022

Senator Martin Heinrich
303 Hart Senate Office Building
Washington, D.C. 20510

Senator James Risch
483 Russell Senate Office Building
Washington, DC 20510

Senators Heinrich & Risch,

On behalf of our millions of supporters and members we write to raise concerns with S. 3571, The Good Samaritan Redevelopment of Abandoned Hardrock Mines Act of 2022, and share our opposition to the legislation in its current form. We hope to work with you to update the legislative text to address our shared goal of cleaning up hardrock mines that litter the American West, while protecting communities from future extractive processes.

Although we agree that cleaning up abandoned hardrock mines is an urgent necessity in need of being addressed, prioritizing cleanup cannot come at the expense of weakening core environmental laws, reducing public and tribal input, preventing access to justice, or putting additional lands and waters at risk of perpetual pollution, which the current version of this legislation will do.

The most responsible and effective ways to incentivize and encourage cleanup of abandoned mines is to provide funding to land management agencies such as the Bureau of Land Management and US Forest Service, where many of these abandoned mines are located, which we fully support. These agencies have responsibility under environmental protection laws to clean-up this pollution and should be funded appropriately by Congress to undertake clean-up. For example, Congress should fully fund Section 40704 of the Infrastructure Investment and Jobs Act (IIJA), which authorized $3 billion in funding for hardrock mine cleanup.

In its current form though, S. 3571 would exacerbate risks to drinking and other water by undermining the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Additionally, it threatens to prevent Americans from having their voices heard on projects that will directly impact them and the lands and waters they live around, as well as prevent Americans from seeking justice under the law.
The bill undermines CWA and CERCLA by granting a perpetual waiver of liability for a “Good Samaritan” for any actions undertaken even if those actions cause increased pollution and harm to surrounding communities. These perpetual liability waivers would be available even for activities that are not addressing or related to cleaning up the existing pollution. The bill also eliminates the long-standing CWA citizen suit provision for affected individuals and communities, removing one of the fundamental aspects of modern environmental law – the ability of affected persons to seek judicial review to protect the environment when the permitting agency fails to do its job. Additionally, this bill eliminates any need to apply for and obtain a CWA Section 404 permit from the Army Corps of Engineers. This removes a fundamental protection for “waters of the U.S.” and would allow these waters to be turned into dry land, eliminating these waters from existence and from the protections they receive under the CWA.

The bill also allows for truncating the permitting process on projects that could have significant impacts immediately next to someone’s community in a way that limits review and community input under the National Environmental Policy Act (NEPA), including exempting an “investigative sampling permit” from public review, even though that process of sampling—a type of mining exploration—could damage communities, lands, and waters.

Although we agree with the bill sponsors’ intent of helping to clean up mines that are currently devastating communities in the West, this legislation does not require cleanup of pollution, and risks having unintended consequences that could actually harm communities’ waters, lands and cultural resources. We look forward to continuing to work with the sponsors to address these issues. Attached, you will find technical discussion of our concerns that we ask to be rectified before the introduced legislation should receive a hearing or advance in any way.

Earthjustice
Sierra Club
Natural Resources Defense Council
Center for Biological Diversity
Center for Justice & Democracy
Impact Fund
Alliance for Justice
Grand Canyon Trust
Southern Environmental Law Center
Western Watersheds Project
Information Network for Responsible Mining
Progressive Leadership Alliance of Nevada
Sheep Mountain Alliance
Texas Watch
Cascade Forest Conservancy
Uranium Watch
Multicultural Alliance for a Safe Environment
High Country Conservation Advocates
Interfaith Worker Justice - New Mexico
Antigos Bravos
Patagonia Area Resource Alliance
New Mexico Interfaith Power and Light
Southeast Alaska Conservation Council
Wild Arizona
Rock Creek Alliance
Okanogan Highlands Alliance
Save Our Cabinets
Environmental Protection Information Center- EPIC
Great Old Broads for Wilderness, Bozeman
Gallatin Wildlife Association
EcoFlight
San Luis Valley Ecosystem Council
Save the South Fork Salmon, Inc.
The Bill Weakenes Judicial Review and Access to Justice

For decades, Congress has recognized the critical role the public plays in enforcing our most fundamental federal laws through judicial review. Under many statutes—including those protecting civil rights, consumers, the environment, government transparency, people with disabilities, private property, public health, and workers—Congress has authorized the filing of enforcement actions by Americans of all political persuasions seeking justice under the law. Access to justice through access to the federal courts is a fundamental principle in our American democracy. Unfortunately, this bill, as drafted, weakens judicial review in significant and unprecedented ways.

First, the bill inappropriately grants broad liability waivers including to those under current law that are considered a “responsible owner or operator” meaning, those that have liability for the pollution. As drafted, the bill grants a perpetual waiver of liability for a Good Samaritan and all Cooperating Persons, “for any actions undertaken,” even if those actions cause increased pollution and harm to surrounding communities. Additionally, perpetual liability waivers would be available even if the activities that are conducted do not result in complete clean up or are not addressing or related to cleaning up the existing pollution. This leaves frontline communities, whether downstream, downgradient, or adjacent to abandoned mines, vulnerable without any recourse to address increased pollution or existing pollution, ultimately putting their health and safety at risk. Without the fundamental backstop of judicial review, there is a missing check for projects that are inappropriate for the types of permits envisioned by the act because they are too complex or would have significant risks or impacts to frontline communities and the environment.

Furthermore, perpetual liability waivers can be extended to a “cooperating person” and this term is so broadly defined that those that are responsible and liable for the pollution could obtain waivers under this guise. This would shield those that are responsible under the law for cleaning up pollution from being held accountable under both the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Additionally, there are no sideboards to guard against corporate shells and other corporate structures that could be abused, allowing those entities to shirk their liabilities under existing law. These loopholes must be removed.

Broad liability waivers are also unnecessarily extended to a host of activities and situations. The liability exemption for “investigative sampling” contains no requirement that the operator of an “investigative sampling” project ensure that the conditions do not worsen, and exempts these operators from liability even if their activities worsen water conditions. Investigative sampling is also broadly defined, failing to ensure activities are limited to investigating water quality and the pollution conditions of a site. As introduced, there are insufficient protections to guard against these permits being used in a way that reprocesses material, or results in other activities like exploration, prospecting, or beneficiation. This creates an exemption from the laws that otherwise would apply to such activities, including by granting liability waivers. Additionally, the bill allows an unlimited number of broadly defined “investigative sampling” operations, with no
cap on the number of permits as there is with the Good Sam permits. This flies in the face of the framing that this legislation is narrow and targeted.

The bill includes a “Force Majeure” loophole, granting broad immunity for Good Sam permit violations, including in an instance of a “public health emergency.” Companies have pushed for inappropriate compliance shields and liability waiver during the pandemic from public health and safety, and environmental compliance laws, even when their own actions were the proximate cause of harm. Such a waiver, as this bill would grant, certainly do not belong in the CWA or in CERCLA.

Finally, the bill also eliminates the long-standing CWA citizen suit provision for affected individuals and communities, removing one of the fundamental aspects of modern environmental law—the ability of affected persons to seek judicial review to protect the environment when the permitting agency fails to do its job. Citizen suit provisions have been a key to 50 years of successful enforcement of bedrock environmental laws. Eliminating the right of individuals to compel the enforcement of environmental laws would set a dangerous precedent that has no place in any legislation.

The liability waivers this bill would provide are especially alarming because a large-scale mine could later be developed at an investigative sampling or Good Sam site and could take advantage of liability waivers to shield their mining and development from CWA and CERCLA. This is antithetical to the purported clean-up objective of the Act. Not only would it undercut any clean-up measures that had been taken at the site, but it would also likely create even more significant mine pollution and health impacts to the surrounding communities than originally existed because there is no accountability mechanism. Large scale-industrial mines cannot be allowed to operate without full CWA and other environmental law compliance.

**The Bill Exacerbates Risks to both Water Quality and to the Clean Water Act**

The harm from abandoned hardrock mine drainage to water quality is significant, but any solution that promotes remediation, sampling, and potential “remining” should not introduce additional significant risks to water quality as part of a “solution” to cleaning up those abandoned mines.

As mentioned earlier, eliminating the ability of downstream community members to challenge permit violations through citizen suits under the CWA eliminates a fundamental tool for the public to hold polluters accountable for water quality pollution. This bill creates an unacceptable situation where “remediation” could worsen water quality outside the permit boundary, such as downstream or downgradient, while shielding those responsible for this pollution from the CWA in perpetuity. While the citizen suit shield in this bill “only” holds if the permittee is in compliance with the permit terms, this provision effectively shifts the ability to hold polluters accountable into the hands of agencies rather than impacted communities, because the federal agencies (not all of which may prioritize environmental protection) determine the scope of the permit and also evaluate permit compliance without the critical ability for independent citizen oversight. This
approach to environmental accountability removes one of the strongest tools that clean water advocates have for holding agencies and polluters accountable.

Importantly, the bill eliminates any need to apply for and obtain a CWA Section 404 permit from the Army Corps of Engineers. In removing this fundamental protection for “waters of the U.S.,” the bill allows a Good Sam permittee to discharge “dredged or fill material” into a waterway, without any involvement or oversight by the Corps, and without compliance with the requirements of Section 404. This would allow “waters of the U.S.” to be turned into dry land through activities including grading, filling, and other earthwork, eliminating these waters from existence and, therefore, from the protections these waters receive under the CWA. A Good Sam permit cannot be the means to avoid Section 404 or U.S. Army Corps jurisdiction.

Furthermore, requirements in the bill largely apply to surface waters, with no provision to ascertain the groundwater conditions existing at the time a permit application is submitted, i.e. the existing groundwater quality baseline. This leaves groundwater without any oversight or baseline for comparison at the conclusion of clean-up, making it impossible to ensure that cleanup is successful, and not merely resulting in moving the pollution elsewhere. This is critically important as groundwater and surface water are often directly connected, as hydrologists have shown time and time again (most recently in the Maui case before the Supreme Court and before that in EPA’s own report titled Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence). By failing to require a pre-and post-analysis and characterization of groundwater conditions in legislation dealing squarely with mine cleanup, the goal of improving water quality conditions at the site would be difficult to evaluate and even harder to achieve.

**The Bill Undermines Public Input & Appropriate Permitting**

In addition to concerns with judicial review and exemptions under the CWA, the bill raises a series of problematic issues regarding the process of permitting a site or proposal. The bill allows for truncating the permitting process in a way that limits review and community input under the National Environmental Policy Act, including threatening to exempt an inappropriately defined “investigative sampling permit” from public review, even though investigative sampling could be damaging to communities, lands, and waters. This legislation is also unclear as to whether the special use permit process under existing federal public land laws would apply. Currently, all industrial operations on public lands require detailed public and agency review under these laws, however this legislation would not require similar review and process.

Additionally, this legislation concerningly incentives ill-advised methods for stemming water pollution. Specifically, it allows for plugging of an adit (an entrance into an underground mine) on federal lands, even though that is precisely what led to the Gold King Mine disaster. Gold King’s outcome shows that adit plugging is not a long-term solution to reclamation of any mine, and the bill should not allow such a counter-productive approach. The systematic problems with the bill are further underscored by this legislation allowing self-bonding—which is not allowed under current federal public law because it is far too risky—and has allowed many companies to walk away without paying for clean-up.
September 28, 2022

Letter to Senate Environment and Public Works Committee; Senate Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight Subcommittee; and, Senate Fisheries, Water and Wildlife Subcommittee in Support of the “Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022” (S.3571)

The Honorable Senator Tammy Duckworth, Chair
Subcommittee on Fisheries, Water, and Wildlife
Senate Environment and Public Works Committee
Washington, DC 20510

The Honorable Senator Cynthia Lummis, Ranking Member
Subcommittee on Fisheries, Water, and Wildlife
Senate Environment and Public Works Committee
Washington, DC 20510

The Honorable Senator Jeff Merkley, Chair
Subcommittee on Chemical Safety, Waste Management,
Environmental Justice, and Regulatory Oversight
Senate Environment and Public Works Committee
Washington, DC 20510

The Honorable Senator Roger Wicker, Ranking Member
Subcommittee on Chemical Safety, Waste Management,
Environmental Justice, and Regulatory Oversight
Senate Environment and Public Works Committee
Washington, DC 20510

Dear Chairmen Duckworth and Merkley and Ranking Members Lummis and Wicker:

The Women’s Mining Coalition (WMC) appreciates this opportunity to provide the following statement of support regarding the “Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022” (S.3571).

For nearly three decades, WMC in conjunction with the U.S. mining industry have advocated for bipartisan legislation to enable Abandoned Mine Lands (AML) reclamation by addressing the Clean Water Act and Superfund liability issues that are a serious barrier to third-party Good Samaritan AML cleanup efforts.

Virtually all those who have evaluated AML policy issues have recognized and documented the legal impediments to voluntary cleanup of AMLs with complex surface water and groundwater contamination issues due to contact with mine waste and/or seepage from old underground workings. Policymakers and independent researchers like the National Academy of Sciences – National Research Council, and the Western Governors’ Association have urged Congress to eliminate the liability
exposure that thwarts parties that have no previous involvement with a mine from undertaking voluntary reclamation and remediation activities.

Furthermore, Section 40704 of the Infrastructure Investment and Jobs Act (IIJA) established a new abandoned hardrock mine reclamation fund to jumpstart abandoned mine cleanups, yet liability issues provide a significant barrier to the participation of public-private partnerships in this new program. By passing Good Samaritan legislation, Congress can begin to remove these barriers and maximize the value of the public’s investment in abandoned hardrock mine remediation.

More recently, the Interagency Working Group being led by the Department of the Interior, has asked for information on how to develop meaningful Good Samaritan proposals that include reprocessing of mine tailings and waste. There is a growing awareness of the opportunities associated with reprocessing old mine waste as a source of critical minerals. However, concerns about Superfund and Clean Water Act liability exposure are currently creating significant barriers to reprocessing of legacy mine waste. The liability relief template in S. 3571 is an important initial step in addressing some of the liability concerns in order to capitalize on the critical minerals resources in old mine waste.

The WMC thus strongly supports S.3571. The fifteen Abandoned Mine Land (AML) remediation pilot projects authorized in this bipartisan bill provide a path to addressing the liability issues at AML sites that do not have complex water quality issues.

WMC applauds Senators Risch and Heinrich for their vision and leadership in introducing this important bill. We also appreciate the many bipartisan co-sponsors of S. 3571.

We respectfully ask the members of the Subcommittees on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight, and Fisheries, Water, and Wildlife of the Senate Committee on Environment and Public Works to support S. 3571. Thank you for your consideration of this letter of support.

Sincerely,

Sara Thorne
President

Wanda Burget
WMC Manager

cc: Senate Environment and Public Works Committee Chairman Senator Tom Carper
    Senate Environment and Public Works Committee Ranking Member Senator Shelley Moore Capito
    Jake Kennedy, United States Senate Committee on Environment and Public Works

The Women’s Mining Coalition is a non-profit organization advocating for today’s modern mining industry, which is essential to our Nation.
The Honorable Cynthia Lummis
Ranking Member
U.S. Senate Fisheries, Water and Wildlife Subcommittee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Lummis:

On behalf of the members of the Wyoming Mining Association, we commend you for working toward bipartisan solutions to address legacy abandoned mine lands (AMLs) in Wyoming and throughout the western United States. Your support for a hearing on Senators Martin Heinrich and Jim Risch’s Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571) provides the opportunity for meaningful action toward addressing legacy AMLs.

S. 3571 gives conditional liability relief to enable Good Samaritans to begin cleanup of low-risk AMLs. Reclamation of abandoned, pre-regulation mines is achievable now more than ever with technologies, equipment, and expertise of the modern mining industry and in partnership with environmental groups and other Good Samaritans.

The narrowly defined permits granted within the legislation allow for appropriate environmental oversight and accountability of any cleanup efforts while providing the necessary liability relief that have stood in the way of cleanup and remediation activities that have impacted some communities for decades.

This legislation is paramount to removing the obstacles that prevent the remediation of important land and water resources and addressing environmental concerns of states, Tribes, and communities across the United States.

We appreciate your leadership in seeking bipartisan improvements to remediation of AMLs that clear the way for positive, on-the-ground environmental progress. Thank you for your work for Wyoming.

Best regards,

Travis Deti
Executive Director

www.wyomingmining.org
May 11, 2022

Honorable Tom Carper  
Chairman  
U.S. Senate Committee on  
Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

Honorable Shelley Moore Capito  
Ranking Member  
U.S. Senate Committee on  
Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

As cosponsors of the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571), we urge you to prioritize this legislation and hold a hearing on S. 3571 at the committee’s earliest convenience. With strong support, this legislation is the first bipartisan piece of Good Samaritan legislation introduced since 2009 and represents the culmination of years-long efforts between conservation groups, industry, and other stakeholders to develop legislation that supports and stimulates the remediation of abandoned mines.

Historic mining in the United States created a significant number of abandoned hardrock mines, a portion of which pose environmental hazards to surrounding communities. Many of these legacy mine sites are over a century old. Their owners no longer exist or are simply not known. Mining companies and conservation organizations that have no legal or financial responsibility to these abandoned mines want to volunteer to remediate some of these sites. Unfortunately, the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act contain strict liability provisions that stop these Good Samaritans from doing so. Good Samaritans simply will not take on remediation projects because these existing laws would leave them legally responsible for all the pre-existing pollution from a mine, even though they had no previous involvement.

S. 3571 would create the first-ever pilot permitting program to clear the way for positive, on-the-ground environmental remediation projects. This small-scale pilot program is designed for fifteen low-risk projects over seven years to build public confidence that Good Samaritans, who have the expertise and financial resources, can responsibly conduct environmental remediation activities and achieve important water and soil quality improvements at legacy mine sites. Importantly, this work can be done under federal oversight with the appropriate permitting requirements and environmental review, while also providing Good Samaritans critical liability protections. If Congress is serious about finding solutions to remediate abandoned mines, it must remove the legal obstacles preventing the remediation of important land and water resources and establish a permitting program that addresses this unique challenge.

As you continue your work to schedule priorities before the committee, we urge the committee to take up and pass S. 3571 to support efforts for removing barriers to the cleanup of abandoned hardrock mines. Thank you for your attention to this important bipartisan issue.

Sincerely,

Mark Kelly
United States Senator

Cynthia Lummis
United States Senator
September 29, 2022

The Honorable Tom Carper  
Chairman, Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member, Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito,

The American Water Works Association offers this letter for the record to the Committee on Environment and Public Works for the hearing entitled “A Legislative Hearing on S. 3571 – Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.”

AWWA would like to thank the Committee for considering S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act. This legislation is an important first step in the effort to maximize the number of orphaned mine sites that receive remediation, while ensuring positive environmental benefits and the protection of source waters.

Background

There are more than 500,000 abandoned hard rock mines throughout the American West, and EPA estimates that 40 percent of watersheds in the region may be contaminated by pollutants – including mercury, arsenic, and copper – from these mines. There are also tens of thousands of abandoned coal mines in the American east, primarily located in and around Pennsylvania, West Virginia, and Kentucky.

Many of these abandoned mines date back to the mid- to late-1800s, meaning that responsible parties may no longer be available to contribute to remediation and cleanups are often financed by taxpayers. According to the Government Accountability Office, federal agencies spent $287 million per year between 2018 and 2017 remediating 394 abandoned mines, and EPA has been working on some of the sites for more than 20 years.
However, under current Clean Water Act and Superfund laws, Good Samaritans who volunteer to remediate abandoned mine sites are responsible for pollution from the mines as soon as they begin work. This additional liability is a major roadblock for organizations that would otherwise recover these sites and restore the land. With the total cost to remediate these sites now estimated to exceed $50 billion, it's more important than ever that we clear the way for Good Samaritans to pitch in and help.

**Safeguards**

AWWA believes that any effort to waive liability for Good Samaritans should include strict safeguards to ensure that permit holders are acting responsibly and that remediation efforts provide a net environmental benefit to relevant waters. We are heartened to see that this legislation includes provisions to that effect.

For example, the bill requires that EPA conduct due diligence on applicants to ensure that they are responsible actors with the financial capability to complete the project. EPA must also determine that completion of the project will result in partial or complete remediation of the mine residue.

**Potential improvements**

We believe that the notification requirements in the bill could be improved. While it is important that local governments be notified of remediation activity that may impact downstream utilities under their jurisdiction, not every utility is a city department or directly overseen by a local government. We recommend adding a requirement that utilities be notified directly when a remediation project may impact their operations to reduce the risk of any unintended consequences that could impact drinking water.

**Looking Forward**

Good Samaritan legislation has been debated in Congress for decades now without substantial action. We believe the pilot program authorized in this bill is a good first step toward accelerating abandoned mine remediation in a way that protects the environment and important source waters.

AWWA is an international, nonprofit, scientific and educational society dedicated to providing total water solutions to protect public health and assure the effective management of water. Founded in 1881, the association is the largest organization of water professionals in the world.

Our membership includes more than 3,900 utilities that supply roughly 80 percent of the nation’s drinking water and treat almost half of the nation’s wastewater. Our 50,000 members represent the full spectrum of the water community: public water and wastewater systems, environmental advocates, scientists, academicians, and others who hold a genuine interest in water, our most important resource. AWWA unites the diverse water community to advance public health, safety, the economy, and the environment.
Sincerely,

[Signature]

G. Tracy Mehan III
Executive Director, Government Affairs

Cc: Members of the Committee on Environment and Public Works
September 28, 2022

The Honorable Tom Carper
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

Dear Chairman Carper, Ranking Member Capito, and Members of the Environment and Public Works Committee,

The Congressional Sportsmen’s Foundation (CSF) would like to express its appreciation for the Committee holding a hearing on Thursday, September 29 on S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022, which is a significant priority for CSF.

It is estimated that around 500,000 abandoned hardrock mine sites exist across the nation. While not all abandoned mine sites pose a risk of contaminating the environment with toxic pollution, many do and require cleanup and remediation to minimize or eliminate impacts to fish and wildlife populations, as well as public health. While federal agencies have made significant progress in cleaning up abandoned mine sites in recent years, eliminating unnecessary liability barriers to state and non-governmental organizations (Good Samaritans) would substantially increase the pace at which mines are reclaimed, habitats are restored, and fish and wildlife populations rebound in localized areas for the public to enjoy.

Unfortunately, under current federal law, Good Samaritans who can and want to assist with mine remediation are treated as if they are polluters themselves, posing significant liability risks that derail numerous would-be cleanups. For example, if a non-governmental organization or other entity acting as a Good Samaritan cleans up a mine site, then they become responsible for any future pollution for the mine site as soon as they touch that site, even if they have no previous connection to the mine. This in turn often deters these Good Samaritans from conducting mine restoration projects because of the threat of future liability risks.

S. 3571 would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups and would provide liability protections for the acting Good Samaritans. Remediation projects must pose a low risk to the environment and improve environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief,
which will allow them to move forward with projects addressing harmful abandoned mine waste without the threat of future legal responsibility. The bill also provides safeguards in that additional mining activities are strictly prohibited and any uncorrected permit violations leading to worsening of environmental conditions would result in liability protections being voided.

With an estimated cost of more than $50 billion to restore abandoned mines across the United States, promoting public-private partnerships through S. 3571 would allow non-federal restoration specialists to restore degraded fish and wildlife habitat, promote job growth, and enhance water quality at a limited cost to the federal government. This legislation builds upon investments made by this Committee through the Infrastructure Investment and Jobs Act and subsequent legislation that seek to restore abandoned mine sites across the country.

We sincerely appreciate Senators Heinrich and Risch for their leadership and efforts to address this national problem for local communities, our fish and wildlife resources, and the hunters and anglers who enjoy and cherish those resources. We encourage the Committee’s support of this common-sense legislation and urge an expedited markup and favorable report.

Sincerely,

[Signature]

Jeff Crane
President and CEO
September 29, 2022

Thomas R. Carper
Chair, Committee on Environment and Public Works
United States Senate
410 Dirksen Office Building
Washington, DC 20510

Shelly Moore Capito
Ranking Member, Committee on Environment and Public Works
United States Senate
456 Dirksen Office Building
Washington, DC 20510

Re: S.3571, Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Chair Carper and Ranking Member Capito:

Thank you for holding today’s hearing on S.3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. On behalf of ConservAmerica, a nonprofit dedicated to promoting commonsense, fiscally responsible, durable solutions to today’s environmental, conservation, and energy challenges, I write in support of this bipartisan bill.

Helping to reform, strengthen, and improve protections for our nation’s natural resources ranks among ConservAmerica’s highest priorities. Unfortunately, far too often, policies that were adopted to help remedy environmental challenges stand as a hindrance to pollution mitigation and remediation. Such is the case with abandoned hardrock mines in the U.S., where concerns about legal liabilities deter third parties from voluntarily pursuing environmental cleanup at legacy sites.

Mining has been conducted in the U.S. throughout its history and much of it occurred before the adoption of today’s legal and regulatory framework, which is designed to protect human health and the environment. Consequently, many historic mining operations were abandoned without being reclaimed and/or without appropriate environmental safeguards in place. The Government Accountability Office (GAO) has identified as many as 140,000 abandoned hardrock mines on lands managed by federal agencies, including 22,500 that may pose environmental hazards.¹ Taxpayers pay for remediating the most toxic sites through the Comprehensive Environmental

¹ https://www.gao.gov/assets/gao-20-238.pdf
Response, Compensation and Liability Act’s (CERCLA) Superfund program, but limited federal funding limits the program’s impact.

Many third parties possess the initiative, resources, and technical ability to clean up watersheds and acid-mine drainage from these legacy mines, yet concerns about legal liabilities very often deter them from moving forward with these environmentally friendly projects. Commonly referred to as “Good Samaritans,” these third parties were not responsible for the mine or the environmental damage, but the broad reach of the Clean Water Act and CERCLA makes them potentially responsible for the full breadth of liabilities associated with the mine site—well beyond what they hope to clean-up through voluntary actions. EPA has adopted a policy of using administrative tools to encourage Good Samaritan cleanups. However, as evidenced by the slow pace of remediation, these tools are limited and not capable of providing the same protections and incentives at the scale needed as federal legislation.

The Good Samaritan Remediation of Abandoned Hardrock Mines Act creates a pilot permitting program that would enable not-for-profit cleanup efforts at orphaned mine sites by ensuring reasonable protections from legal liabilities. This will encourage states, local governments, nonprofits, landowners and corporations to move forward with projects to reduce pollution and improve water quality. Moreover, by enabling proof of concept, this pilot program will help provide a glidepath to enacting a permanent Good Samaritan program, which is needed to address the scale of the problem.

We applaud Senators Heinrich and Risch and their respective staffs for their work on this bill and we urge the Committee to move forward with its consideration.

Sincerely,

Todd Johnston
Vice President

Copy: Senator Heinrich
            Senator Risch
September 21, 2022

Dear Senators Carper and Cardin:

On behalf of the Mid-Atlantic (Maryland, Delaware and Washington, D.C.) Council of Trout Unlimited and our 3,500 members, I urge you to support the passage of the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 (S. 3571) to help facilitate the cleanup of abandoned hard rock mines. We urge a hearing before the Environment and Public Works Committee to ensure full and fair consideration of this important legislation.

It is estimated that there are at least 140,000 abandoned hard rock mine sites in the American West on public lands where there is no responsible party to take on the cleanup. According to the GAO, over 22,000 of these sites are causing, or have the potential to cause, environmental impacts and hazards to downstream communities. Moreover, there are likely tens of thousands of additional abandoned mines on non-federal lands where inventories are incomplete. These sites have a high potential to degrade water quality in some of our Nation’s most important salmon, steelhead and wild trout streams.

Cleanup costs could be as high as $54 billion and in many cases, remediation of these sites falls upon Superfund, an underfunded federal program that is ill-suited to deal with tens of thousands of abandoned mines polluting the environment. State agencies and private groups like Trout Unlimited who have no legal responsibility or connection to these abandoned mining projects – true Good Samaritans – want to help tackle some of these sites. Unfortunately, substantial liability risks under the Clean Water Act and CERCLA severely limit the work Good Samaritans and state agencies can do to reduce pollution from draining abandoned mines.

S. 3571 would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, Good Samaritans would be provided carefully prescribed liability relief, which will allow them to move forward to remediate harmful acid mine drainage pollution. Additionally, the bill specifies that mining activities are strictly prohibited, and should a permit holder violate a permit and cause environmental conditions to worsen, they could be subject to full enforcement under the Clean Water Act, including citizen suits.

[Trout Unlimited’s mission is to bring together diverse interests to care for and recover rivers and streams, so our children can experience the joy of wild and native trout and salmon.]
Good Samaritan projects need an appropriate mechanism for projects to produce significant improvements in water quality, implement best-design and management practices, and conduct appropriate monitoring, but that does not expose the Good Samaritan to liability if the project at some point does not achieve a required criterion for a given pollutant.

By passing the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022*, Congress can provide such protections while also holding Good Samaritans accountable to terms of their permits. Moreover, passing Good Samaritan legislation will allow cleanups to move forward, helping to foster a restoration economy and creating both jobs and clean water. We urge you to support this much-needed legislation and help advance it swiftly through Congress and into law. To do otherwise will allow abandoned mines that would otherwise be cleaned up to continue polluting our environment and downstream communities.

Don Haynes
Trout Unlimited
Mid-Atlantic Council Chair
October 4, 2022

Chairman Tom Carper  
United States Senate  
Environment and Public Works Committee  
410 Dirksen Senate Office Building  
Washington, DC 20510

Ranking Member Shelly Moore Capito  
United States Senate  
Environment and Public Works Committee  
410 Dirksen Senate Office Building  
Washington, DC 20510

Senator Martin Heinrich  
United States Senate  
410 Dirksen Senate Office Building  
Washington, DC 20510

RE: American Association for Justice Concerns with S. 3571, Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

Chairman Carper, Ranking Member Capito and Members of the Committee:

The American Association for Justice (AAJ) writes to express our concerns with S.3571, Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 that was the subject of a recent subcommittee hearing. While the legislation may be well intended and abandoned hardrock mines are a significant environmental concern; as currently drafted it falls well short of adequately protecting the environment and the individuals that live and work near abandoned hardrock mines.

First, the legislation leaves the Administrator with significant authority and deference to determine which projects are selected for permits, whether the permit holders can complete the projects, whether the permit holders are in compliance with the permits. Without more clarity, this is a broad and blanket delegation to a federal agency with little oversight or accountability from Congress.

Second, the immunity provision for permit holders undergoing the abandoned Hardrock mine clean up is broad, with no clear end, granting immunity essentially forever. Additionally, there is no clear language limiting the immunity from applying to reckless or even intentional conduct. While the drafters may have intended the immunity to be limited to certain claims, as drafted the reference to claims can be broadly construed to involve more than just the two types of claims listed. The overbroad immunity language allows for permit holders to avoid any kind of accountability when they undertake these remediation projects. This is dangerous for the communities that live around the mines and the not helpful to the overall environment.

Third, the Administrator has complete authority to dictate the remediation if the permit holder makes things worse. This combination of broad immunity powers and leaving the Administrator as the sole unchecked decisionmaker may have grave consequences. In the event a permit holder was to cause further pollution at a Hardrock mine the Administrator would be the sole authority to hold these permit holders accountable. We have strong concerns about such unchecked authority, especially under an Administration that is less sensitive to protecting the environment.

As drafted we fear that this well intentioned legislation may make pollution worse and leave the public more at risk. We appreciate the opportunity to share our concerns with the committee and we would welcome the opportunity to work toward some meaningful and protective improvements to this legislation. Please reach out to Sarah Rooney, at Sarah.Rooney@justice.org, with any questions or concerns.

Sincerely,

Linda Lipsen
AAJ Chief Executive Officer
American Association for Justice
September 29, 2022

The Honorable Mark Kelly
U.S. Senate
516 Hart Senate Office Building
Washington, D.C. 20510

Re: Senate Committee on Environment and Public Works Hearing on the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 (S. 3571)

Dear Senator Kelly:

The Arizona Mining Association (AMA) appreciates your continued support for S. 3571 and urges the Environment and Public Works Committee (EPW) to advance this legislation to enhance the clean-up of historic and pre-regulation abandoned mines. The AMA has been a strong supporter of Good Samaritan legislation and will continue to support efforts to advance meaningful reform in whole or in part.

The AMA is comprised of entities engaged in mining and mineral production and processing in Arizona and is the unified voice of responsible, sustainable and safe mining in Arizona. Through our advocacy, we help Arizona continue to be a premier location for mining investment in the U.S. In 2021 AMA member companies proudly produced approximately 74 percent of the nation’s newly mined copper, along with significant amounts of associated valuable co-products, including gold, silver, selenium, tellurium and molybdenum. Arizona’s hardrock mining industry directly employs approximately 13,645 people, and over 47,300 indirectly, which contributes an estimated $14.2 billion to Arizona’s economy.

Arizona’s hardrock mining industry lauds S. 3571 as the right approach to providing an opportunity to achieve meaningful incentives and protections to our industry, conservation groups, and community partners with the capabilities and expertise to perform this work on the ground. The effective partnerships supported by this legislation have and will continue to result in outstanding work that benefits the State of Arizona and its local communities.

Web: www.azmining.org Twitter: @azmining FB: Arizona Mining Association
Arizona is the number one non-fuel mineral producing state in the nation and recently passed HCR 2008, a concurrent resolution urging support for passage of Good Samaritan legislation. The HCR passed with overwhelming bipartisan support in both the House and Senate, demonstrating Arizona’s strong support for commonsense solutions to abandoned mine lands, such as Good Samaritan legislation.

AMA and our members stand behind S. 3571 and support its bipartisan support and passage. Good Samaritan legislation is of critical importance to the future of the mining industry and the communities in which we live and work, and we are grateful for your efforts. Thank you, for your continued leadership and focus on key issues of importance to Arizona’s mining industry.

Sincerely,

[Signature]

Steve Trussell
Executive Director
September 13, 2022

VIA EMAIL TO:

Honorable Michael F. Bennet  
c/o John Whitney  
261 Russell Senate Office Building  
Washington DC 20510  
John.Whitney@bennet.senate.gov

Honorable John W. Hickenlooper  
c/o Helen Katch  
374 Russell Senate Office Building  
Washington DC 20510  
Helen.Katch@hickenlooper.senate.gov

Representative Lauren Boebert  
c/o Naomi Dobbs  
Naomi.Dobbs@mail.house.gov

RE: Senate Bill 3571 – Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022

We, the Board of County Commissioners of La Plata County, Colorado, write today to express support for Senate Bill 3571 and ask you to urge your colleagues in the Senate Committee on Environment and Public Works to schedule this legislation for hearing.

Mining has had an economically and culturally significant impact across the United States—especially in the West. Our local San Juan Mountains have produced gold, silver, copper, zinc, lead, cadmium ore, vanadium, uranium, and more. Mining looms large in our history.

Unfortunately, not every era of mining has benefited from today’s scientific knowledge and technology. Nor has every former operator or site employed these best practices. As a result, thousands of old and improperly abandoned mines continue to pose a threat that requires action. Many of these sites lack an owner or operator who could be held responsible for the mess they created, and the federal government likely cannot quickly and effectively address all of these sites on its own.

We believe that Good Samaritans, as qualified by Senate Bill 3571, could be part of the solution as a private-sector compliment to what the federal government is already doing. But those Good Samaritans are unlikely to shoulder part of the burden to remediate hazards presented by old mines as long as they risk the same liability imposed on owners and operators under the Clean Water Act (33 U.S.C. 1251 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

Senate Bill 3571 strikes a reasonable balance. Following an extensive application process, administrative review, and ongoing oversight by appropriate agencies, Good Samaritans could be authorized to enter the fray and clean up messes that others have abandoned. Although the Good Samaritans would be protected
from some liability under existing federal law, they would remain accountable to conduct their cleanup operations in a manner consistent with their federally issued permit under the watchful eye of the EPA.

The La Plata County Board of County Commissioners believes the pilot program proposed by Senate Bill 3571 is worth a try and merits the committee hearing necessary to move forward in the legislative process. We hope that you will join us in encouraging your colleagues to review and ultimately approve a Good Samaritan permitting process that can help address the threat of thousands of old and abandoned mines.

Please do not hesitate to contact us if we can be of any assistance in advancing this important legislation.

Sincerely,

LA PLATA COUNTY
BOARD OF COUNTY COMMISSIONERS

Matt Salka
Chair

Marsha Porter-Norton
Vice Chair

Clyde Church
Commissioner

CC:
Chairman of the Senate Committee on Environment and Public Works, c/o
Maryfrances_REKPS@epw.senate.gov

Ranking Member of the Senate Committee on Environment and Public Works, c/o
Travis_CONE@epw.senate.gov

Chief Clerk for the Senate Committee on Environment and Public Works, c/o
Alicia_HAWKINS@epw.senate.gov
September 7, 2022

Alicia Hawkins
Chief Clerk
Senate Committee on Environment and Public Works

Dear Ms. Hawkins,

We are writing to communicate the support of the Hinsdale County Board of Commissioners for State Bill 3571 – Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022.

There are over 140,000 abandoned hardrock mine sites in the United States, and 22,500 of these sites in the West pose environmental hazards. There is no responsible party to take on the cleanup of these abandoned mines, but entities called “Good Samaritans” want to help tackle this problem.

Current laws and regulations make it difficult, if not impossible, for well-intended, non-responsible parties to perform much needed mine remediation for fear of long-term liability. We understand S.3571 would require the Environmental Protection Agency (EPA) to establish a Good Samaritan pilot program which would issue permits to allow Good Samaritans to remediate historic mine residue at abandoned hardrock mine sites, without assuming liability under specified environmental laws.

It is encouraging that S. 3571 has bipartisan support of western states. We hope this legislation will enable qualified remediating parties, including organizations and local and state government agencies, to perform voluntary mine remediation work, improving the environment while also fostering job creation in local communities.

Hinsdale County has a number of abandoned hardrock mines, so the importance of remediation of potential environmental hazards is important to our county.

The Hinsdale County Board of Commissioners urges you to support State Bill 3571 to allow important mine remediation by Good Samaritans in Colorado.

Respectfully submitted,

Kristie Borchers, Chair
Robert Hurd, Vice Chair
Greg Levins, Commissioner
Testimony for the Record
U.S. Senate Committee on Environment and Public Works
Hearing On the Good Samaritan Remediation
of Abandoned Hardrock Mines Act of 2022 (S. 3571)
September 29, 2022

The National Mining Association (NMA) appreciates the continued focus of the U.S. Senate Committee on Environment and Public Works on the decades-long effort to establish a Good Samaritan permitting program to remediate legacy abandoned mine lands (AML) and provide meaningful environmental and public health improvements to impacted communities. The NMA urges strong support for the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571) and thanks Senators Martin Heinrich (D-N.M.) and Jim Risch (R-Idaho) and their staff for leading on this important issue.¹

The NMA is U.S. mining’s advocate in Washington, D.C., and beyond. Our mission is to build support for public policies that will help America fully and responsibly utilize its natural resources. We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security and economic security, all delivered under world-leading environmental, safety and labor standards. Headquartered in Washington, D.C., the NMA has a membership of more than 250 corporations and organizations involved in various aspects of mining and mine remediation activities.

WHY IT IS NECESSARY

Historic mining in the United States, which pre-dates modern environmental laws and current reclamation standards, led to the creation of thousands of abandoned hardrock mine sites and features, a portion of which pose environmental risks to surrounding

communities and negatively impact water quality. With many of these legacy sites more than a century old, there are no financially viable owners, operators or responsible persons to remediate these sites.

To address these legacy AMLs, conservation organizations and mining companies, with no legal or financial responsibility or connection to these sites, have partnered where possible to clean up and remediate low risk sites through voluntary efforts. While this work has resulted in important environmental benefits to communities, volunteers need adequate liability protections to scale up these efforts and invest resources and expertise to complete critical remediation projects.

Strict liability for AML sites is not an unfounded fear but a reality given strict liability federal statutes like the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Take the CWA for example. A Good Samaritan that causes a discharge at an AML site, even if working to improve site conditions, becomes fully responsible for attaining stringent water quality standards in perpetuity even if they had no role in creating the conditions that originally caused the adverse water quality impacts. Simply put, our current legal framework prevents Good Samaritans from initiating more environmentally impactful activities to improve the AML site because of the legal responsibility that would likely attach for the pre-existing pollution from the mine, even though they had no previous involvement.

DECADES IN THE MAKING

For more than two decades, the mining industry has worked to support Good Samaritan legislation that would provide liability protections to industry partners, environmental organizations and other stakeholders to enable the remediation of AMLs and improve the surrounding land and water resources where historic mining took place. With nearly 20 pieces of legislation introduced in Congress during that time, the number of hours and resources spent by interested stakeholders as well as congressional and committee staff to reach a legislative solution is quite astounding.

Despite all these years of effort, there remains a strong, steadfast commitment from the mining industry to work with conservation partners, like Trout Unlimited, congressional allies and other interested parties that are dedicated to advancing a commonsense and responsible legislative solution to enactment. Importantly, S. 3571 marks the first time since 2009 that bipartisan legislation has been introduced in Congress. This important milestone was achievable because diverse stakeholders came together over the course of several years to craft a narrowly tailored bill that would establish a pilot permitting program that holds volunteers accountable while providing necessary liability

2 The exact number of abandoned mines in the United States is currently unknown. The U.S. Government Accountability Office (GAO) recently completed an investigation, finding that there are at least 140,000 abandoned hardrock mine features, of which 22,900 pose or may pose environmental hazards. See GAO, Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors that Limit Efforts to Address Hazards, GAO-20-238 (Mar. 5, 2020), available at https://www.gao.gov/products/ds-20-238 (last visited Sept. 28, 2022).
protections. If enacted, S. 3571 would provide meaningful environmental improvements to impacted communities.

WHAT THE LEGISLATION DOES

The legislation being considered today would establish a seven-year Good Samaritan pilot permitting program for the remediation and cleanup of 15 low-risk, abandoned or inactive mine sites on Federal, State, Tribal and private lands. Sites with a liable responsible owner or operator are not eligible. This pilot program is designed to enable the cleanup of environmentally lower risk projects that result in partial or complete remediation of an AML by, for example, improving or enhancing water quality or site-specific soil quality.

The U.S. Environmental Protection Agency (EPA) will lead the application review process and enforce permits for AML projects on non-public lands. Federal land management agencies are responsible for leading the environmental review for projects on public lands and will enforce permits in coordination with EPA. Good Samaritans are required to submit an extensive permit application backed by financial and technical support that demonstrates the suitability of the project. The permit contains the terms and conditions of the remediation project. No mineral exploration, processing, beneficiation or mining is allowed.

To ensure that remediation activities are appropriate to a particular project, the legislation requires goals for water and soil quality to be set on a site-by-site basis for environmental improvement, rather than enforcing strict standards which cannot be met and would preclude environmentally beneficial remediation activities. All eligible projects are subject to the National Environmental Policy Act (NEPA) and a comprehensive, transparent public review process. If the NEPA review concludes that an eligible project is expected to have significant impacts, a permit may not be issued for that project.

Importantly, S. 3571 provides narrow liability protections to eligible Good Samaritans that remediate AML sites in accordance with an approved permit. These protections shield Good Samaritans from the strict liability provisions in CERCLA and the CWA that have stopped important AML remediation work from occurring across the country. Any activities not authorized by the permit remain subject to all applicable laws. A Good Samaritan permit holder that violates a permit and worsens environmental conditions could be subject to enforcement and liability if those conditions are not corrected.

Finally, the bill allows for the recycling and reprocessing of historic mine waste — which is a priority of the Biden-Harris Administration3 — if a project is on federal land, approved as part of the remediation plan, and profits are first used to defray the cost of remediation, or any government oversight costs incurred. Any remaining proceeds would be deposited into a Good Samaritan Mine Remediation Fund.

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ADDRESSING CONCERNS

The minority of voices dissenting against S. 3571, or other legislative fixes involving a Good Samaritan permitting program, ignore the need for sensible and environmentally protective solutions and perpetuate the AML problem in this country. These organizations would have the committee and the administration believe that large sums of money spent on federally managed cleanup activities is the only way to provide environmental and public health improvements to local communities impacted by AMLs. This is short-sighted. Maintaining the status quo is not the answer as that prolongs existing environmental hazards in impacted communities. Congress should enact S. 3571 as a critical step to facilitate AML remediation.

Last year, Congress passed the bipartisan Infrastructure Investment and Jobs Act, which authorized $3 billion to clean up abandoned hardrock mines. This money, if appropriated, would be a significant down payment and financial resource for addressing AML sites. However, this money must be paired with a Good Samaritan permitting program to ensure there are qualified entities, including mining companies, to complete remediation work on the ground. Enabling and empowering a volunteer workforce—with the knowledge, experience, skills and equipment to leverage federal dollars—will result in tangible environmental improvements while more efficiently utilizing taxpayer dollars.

BROAD BIPARTISAN SUPPORT

From its inception, this legislation is the product of strong bipartisan leadership by Senators Heinrich and Risch, and 16 other equally divided bipartisan members, including several on this committee with Senator’s Cynthia Lummis (R-Wyo.), Mark Kelly (D-Ariz.), Dan Sullivan (R-Alaska) and John Boozman (R-Ark.). It is also the result of broad, thorough and thoughtful consensus between the mining industry and conservation organizations like Trout Unlimited and many others that are proactively engaged in finding solutions to the legacy problems associated with AMLs rather than seeking to maintain the status quo. Through these cumulative efforts, S. 3571 appears before you today as the first bipartisan Good Samaritan legislation introduced since 2009.

The Biden-Harris Administration has expressed support for Good Samaritan legislation. In February 2022, the administration released its Fundamental Principles for Domestic Mining Reform, specifically urging Congress to “provide legal certainty for Good Samaritans working to remediate legacy pollution, including providing for permits and, as appropriate, exemptions from or specialized provisions of environmental laws and regulations that may otherwise dissuade Good Samaritans from undertaking cleanup activities.”

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5 Biden-Harris Principles at 2.
CONCLUSION

A legislative solution is long overdue. The paralysis of inaction has needlessly caused prolonged environmental concerns at AML sites across the country. Opponents of the legislation believe that anything short of a complete cleanup of an AML site is unacceptable. Conversely, the NMA and our minerals producers strongly believe that barring voluntary cleanup and remediation efforts by maintaining unachievable water quality standards condemns local communities to continued environmental impacts, intentionally letting the perfect be the enemy of meaningful water quality improvements.

Today’s modern mining industry stands ready to address legacy mine sites that were abandoned long ago. S. 3571 would finally allow the mining industry to play a more constructive and larger role in AML remediation by utilizing our equipment, skills and experience to clean up these sites without incurring legal liability.

This legislation is critical to removing the obstacles that are preventing the remediation of important land and water resources, and it deserves this committee’s support to clear the way for positive, on-the-ground environmental progress.
Senator MERKLEY. Senators will be allowed to submit written questions for the record through the close of business on Wednesday, October 13th, 2022. The team will compile those questions, send them to our witnesses, and ask our witnesses to respond by Wednesday, October 27th. That will be very helpful to us in taking this process forward.

With that, this hearing is adjourned.
[Whereupon, at 11:10 a.m., the hearing was adjourned.]