

Update: Good Samaritan Legislation and Abandoned Mine Issues

Water Quality Committee

August 4, 2022



Western States Water Council Abandoned Hardrock Mine Cleanup Position #477

- Support for increased federal funding delivered to state and federal agencies in a manner to maximize work at sites prioritized by states
- Support for a rapid and extensive inventory
- Supports efforts by the EPA Office of Mountains, Deserts, and Plains to advance and resolve states' priority abandoned mine issues and new ideas to make progress
- Supports legislation to amend the Clean Water Act to protect Good Samaritans and States from inheriting perpetual liability
- Supports legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans
- Calls on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA, CWA and RCRA liabilities for Good Samaritans including for re-mining



Hardrock Abandoned Mine funding in IIJA

- 40704: Secretary of the Interior “inventory, assess, ...and remediate abandoned hardrock mine land”
 - \$3B authorized but not appropriated
 - \$5M appropriated in FY22; \$25M proposed for FY23
 - Interstate Mining Compact Commission working with DOI Office of Environmental Policy and Compliance regarding state
- 40804: Ecosystem Restoration programming authorization and appropriation for activities that “mitigate environmental hazards on mined lands” for USFS and BLM
 - \$200M split between USDA and DOI
 - IMCC advocating for some pass through to states
- 40202: USGS National Cooperative Geologic Mapping Program tasked with identifying “abandoned mine land and other land containing mine waste where multiple critical mineral ...and metal commodities are anticipated to be present.”



Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022 S. 3571, 117th Congress

Establishes an EPA pilot program to establish a new Good Samaritan permitting program for 15 projects

Sponsors

- **Senator Heinrich (NM), Senator Risch (ID),** Senator Lujan(NM), Senator Daines (MT), Senator Tester (MT), Senator Crapo (ID), Senator Bennet (CO), Senator Barrasso (WY), Senator Cortes Masto (NV), Senator Lummis (WY), Senator Kelly (AZ), Senator Cramer (ND), Senator Sinema (AZ), Senator Sullivan (AK), Senator Hickenlooper (CO), Senator Thune (SD)

Introduced on 2/3/2022



Changes since 2018 legislation

- Enabling mining companies, with no prior responsibility for an abandoned mine, to act as Good Samaritans
- Defining the term “measurable progress” to allow for partial remediation
- Extending liability protection to state, tribal, and private land
- 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



WSWC Recommendations

- Formal consultation process with states at beginning of program rather than only on project specific basis – recognize the role of states as co-regulators
- Explicitly provide liability protection for the United States and federal agencies from CERCLA and CWA
- Future permanent program
 - Providing opportunity for states to administer permits
 - Flexibility for operation and maintenance of remediation activities other than “perpetual and long-term”
- Funding
 - Provide flexibility for states, when acting as a good samaritan, to implement creative approaches to finance remediation (e.g. SEPs)
 - Encourage appropriation of funds authorized in IIJA (\$3B)



Next steps

- Potential for hearing in Environment and Public Works Committee as early as Sept 2022
- Possibility for small revisions to legislation
- Outreach to house representatives including potential sponsors

