



## 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](http://www.westernstateswater.org)

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*<sup>1</sup> (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

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<sup>1</sup> Good Samaritan Remediation of Abandoned Hardrock Mines Act, S. 3571, 117th Congress (2022).

further remediation,<sup>2</sup> which would effectively open opportunities for some of the most qualified and best placed Good Samaritans to complete projects.

- Defining the term measurable progress<sup>3</sup> to allow for partial remediation,<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup>
- Recognizing previous concerns about public process through the public comment requirements of the newly established permitting program.<sup>7</sup>
- Clearly including States as potential Good Samaritan applicants based on the definition of *person* as referenced<sup>8</sup> in both the Clean Water Act<sup>9</sup> and the CERCLA.<sup>10</sup>

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.<sup>11</sup> 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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<sup>2</sup> *Id.* at § 4(f)(5)(B).

<sup>3</sup> *Id.* at § 4(m)(1)(A)(v)(I).

<sup>4</sup> *Id.* at § 4(b)(1)(C).

<sup>5</sup> *Id.* at § 2(8)(A)(ii).

<sup>6</sup> *Id.* at § 4(n)(1)(A).

<sup>7</sup> *Id.* at § 4(e)(2)(B).

<sup>8</sup> *Id.* at § 2(11).

<sup>9</sup> Federal Water Pollution Control Act § 33 U.S.C. 1362(5) (1972).

<sup>10</sup> Comprehensive Environmental Response, Compensation, and Liability Act § U.S.C. 9601(21) (1980).

<sup>11</sup> Good Samaritan Remediation of Abandoned Hardrock Mines Act, S. 3571, 117th Congress, § 3(4); 3(5) (2022).

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 IJA<sup>12</sup> provides an opportunity to make substantial progress on these issues. Although \$3 billion was authorized,<sup>13</sup> Congress has not yet appropriated any funds for this section. As you may know, Congress appropriated funds for clean-up of abandoned coal mines.<sup>14</sup> 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 IJA 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 IJA. 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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<sup>12</sup> Infrastructure Investment and Jobs Act, Division D, Title VII § 40704 (2021).

<sup>13</sup> *Id* § 40704 (e)

<sup>14</sup> *Id* at Division J, Title VI



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July 28, 2022

Secretary Deb Haaland  
U.S. Department of the Interior  
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Secretary Tom Vilsack  
U.S. Department of Agriculture  
[tom.vilsack@osec.usda.gov](mailto:tom.vilsack@osec.usda.gov)

Administrator Michael Regan  
U.S. Environmental Protection Agency  
[regan.michael@epa.gov](mailto: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.

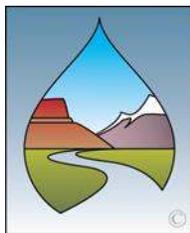
WSWC appreciates DOI's recently released draft guidance on funding for AML activities associated with coal mining, especially the opportunity for states and other stakeholders to provide input on priorities and process. WSWC would appreciate a similar approach to other aspects of abandoned mine cleanup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

A handwritten signature in black ink that reads "Tony Willardson". The signature is written in a cursive, flowing style.

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-20-238); 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 non-liable 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.