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Committee on Environment  
and Public Works

Subcommittee on Chemical Safety, Waste Management,  
Environmental Justice, and Regulatory Oversight

joint with the

Subcommittee on Fisheries, Wildlife, and Water

Washington, D.C.

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

Wednesday, September 28, 2022

United States Senate

Committee on Environment and Public Works

Subcommittee on Chemical Safety, Waste Management,

Environmental Justice, and Regulatory Oversight

joint with the

Subcommittee on Fisheries, Wildlife, and Water

Washington, D.C.

The committee, met, pursuant to notice, at 10:01 a.m. in  
room 406, Dirksen Senate Office Building, the Honorable Jeff  
Merkley [chairman of the subcommittee] presiding.

Present: Senators Merkley, Capito, Whitehouse, Kelly,  
Lummis, Sullivan, Ernst.

STATEMENT OF THE HONORABLE JEFF MERKLEY, A UNITED STATES SENATOR  
FROM THE STATE OF OREGON

Senator Merkley. Good morning, everyone. Welcome to this joint hearing of the Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight and Fisheries, Water, and Wildlife Subcommittees.

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 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. 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. 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 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. 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.

[The prepared statement of Senator Merkley follows:]

STATEMENT OF THE HONORABLE CYNTHIA LUMMIS, A UNITED STATES  
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 is 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. 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 seven-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. 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 CT 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 commonsense way that also respect 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.

[The prepared statement of Senator Lummis follows:]



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 THE HONORABLE MARTIN HEINRICH, A UNITED STATES  
SENATOR FROM THE STATE OF NEW MEXICO

Senator Heinrich. Chairman Merkley, Ranking Member Lummis, 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. 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, which we 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:]

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 THE HONORABLE JAMES E. RISCH, A UNITED STATES  
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. 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, 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 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 THE HONORABLE MARK KELLY, A UNITED STATES 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 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. 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.

[The prepared statement of Senator Kelly follows:]

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

STATEMENT OF MISAEEL CABRERA, 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 commonsense 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 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 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. 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 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.

[The prepared statement of Mr. Cabrera follows:]

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. 4783, 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 the 402 waiver should be non-transferrable and terminate if water quality conditions worsen of 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:]

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 has 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. 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 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 seven-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.

Lastly, 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:]

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. They address issues that are typical problems, which 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 recommendations coming out of the Western Governors' Association.

I used to be on the staff counsel of the Western Governors' Association when I was a general counsel to my Governor, Jim Geringer, of Wyoming, and found the work of the Western Governors to be especially pragmatic, commonsense, helpful, bipartisan, 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 JAMES D. OGSBURY, 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' 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 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 abandoned hardrock mines, and considering S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022. I would like to acknowledge Senators Heinrich and Risch for their bipartisan 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 liability 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 Congress to legally protect Good Samaritans

who clean up abandoned mines, including local and State governments, from becoming legally 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 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:]

Senator Merkley. Thank you all for our 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. 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 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 in 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. 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. 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? Is there room to implement Good Samaritan remediation more broadly?

Mr. Ogsbury. 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. 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. 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. 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 seven 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. 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 most 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. 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 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.

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 material follows:]

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. 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 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. 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, is 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, 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.

[The referenced information follows:]



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 Washington 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:]

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.]