

**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**  
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**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<sup>1</sup>.

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.

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<sup>1</sup> *Idaho Conservation League et al v. Andrew Wheeler and US Environmental Protection Agency*. 2019. 18-1141 (United States Court of Appeals for the District of Columbia Circuit, <https://www.cadc.uscourts.gov/internet/opinions.nsf> 19 July). Accessed July 11, 2022. [https://www.cadc.uscourts.gov/internet/opinions.nsf/EE3F3054B78C5C228525843C0051989A/\\$file/18-1141.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/EE3F3054B78C5C228525843C0051989A/$file/18-1141.pdf).

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”<sup>2</sup>, 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

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<sup>2</sup> *ABANDONED HARDROCK MINES Information on Number of Mines, Expenditures, and Factors That Limit Efforts to Address Hazards*. 2020. GAO-20-238. United States Government Accountability Office, Report to the Ranking Member, Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, U.S. Senate. Accessed September 24, 2022. <https://www.gao.gov/assets/gao-20-238.pdf>.

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.