

**Testimony of James D. Ogsbury, Executive Director
Western Governors' Association**

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

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

September 29, 2022

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

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

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

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

Although the total number of such mines is unknown, a 2020 Government Accountability Office (GAO) study reported that at least 1,363 "mine features" pose significant hazards to the environment, and an additional 21,262 mine features pose unconfirmed environmental hazards. The Environmental Protection Agency estimates claims that approximately 40 percent of western headwaters have been affected by abandoned hardrock mining discharges.

Regardless of the exact number of abandoned mines and mine features, one thing is certain: some are predictably having substantial, negative effects on western communities and the environment. Discharges of acidic mine drainage degrade water supplies for working lands and communities, harm aquatic species, and lead to economic losses for recreation economies.

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

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

- Legally protecting Good Samaritans – including local and state government agencies – who clean up abandoned mines from becoming responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.
- Developing remedies for liabilities associated with re-mining, which deter those best equipped with technology and expertise from improving conditions at abandoned mines.
- Increasing federal funding and workforce capacity dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs.

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

Cleanup of abandoned hardrock mines is impeded by: insufficient funding; concerns about liability for Good Samaritans; a paucity of data establishing the scope of the problem; and

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

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

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



Policy Resolution 2021-09

Cleaning Up Abandoned Hardrock Mines in the West

A. BACKGROUND

1. Hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper. As part of this past, the West contains historically mined and abandoned hardrock mines, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the cleanup and reclamation.
2. The cleanup of abandoned hardrock mines is hampered by two issues – lack of funding and concerns about liability. These issues are compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site.
3. There are numerous economic, environmental, and social benefits from remediating lands and waters impaired by abandoned hardrock mines. In recognition of these benefits, states, municipalities, federal agencies, volunteer citizen groups, and private parties have engaged in or are interested in voluntarily cleaning up abandoned mines. Parties who voluntarily engage in abandoned mine cleanup, but have no liability or responsibility requiring them to clean up the abandoned mine, are referred to in this resolution as Good Samaritans. However, questions of liability stemming from this voluntary cleanup have stymied many of these efforts.
4. Good Samaritans currently have potential liability for their voluntary cleanup under Sections 301 and 402 of the Clean Water Act (CWA), because they can inherit liability for any discharges from an abandoned mine. In addition, Good Samaritans have potential liability for their voluntary cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).
5. Good Samaritans are exposed to these liability risks despite the fact that: they did not previously operate or own the mine; they would voluntarily bear the costs of the cleanup; and they could provide numerous benefits if they were able to remediate the abandoned mine, such as improving water quality, facilitating beneficial land use, and securing the site.
6. Liability concerns also prevent mining companies from re-mining or voluntarily cleaning up abandoned mines. While remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for voluntary efforts.
7. In many western states, abandoned hardrock mine cleanup projects on public lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs. Allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

8. On March 5, 2020, the U.S. Government Accountability Office (GAO) published its report, Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors that Limit Efforts to Address Hazards (GAO-20-238). Bureau of Land Management officials estimated that with the agency's current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database.
9. Because of safety and environmental concerns, the majority of abandoned hardrock mine sites remain idle without any type of reuse. The U.S. Environmental Protection Agency has identified developing solar projects on abandoned hardrock mine sites as an innovative solution to generate energy and return abandoned mine lands to productivity while considering economic, environmental and social effects.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors call on Congress to legally protect Good Samaritans who clean up abandoned mines, including local and state government agencies, from becoming legally responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.
2. Western Governors call on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA and RCRA liabilities for Good Samaritans. The federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental, the mining industry) from improving conditions at abandoned mines.
3. As the costs to clean up abandoned hardrock mines are significant, Western Governors support efforts by Congress and the Administration that would facilitate cleanups by Good Samaritans. To this end, the requirements for Good Samaritan project approvals and reviews should not deter cleanups, while still ensuring there are significant measurable environmental gains from the project. Governors would also support legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.
4. Many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. These states are best suited to determine which entities are eligible for Good Samaritan status and to review and determine the adequacy of Good Samaritan reclamation plans.
5. Federal land managers and state officials that responded to the March 5, 2020 GAO Report consistently expressed that their backlog of work on these mines far exceeds their current staff and budget levels. Western Governors support increased federal funding and workforce capacity dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs.

6. Western Governors support legislation to clarify and, where possible, minimize liabilities associated with developing abandoned hardrock mine sites with solar arrays and other reuse projects with beneficial economic, environmental, and social effects.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

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