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**Testimony
Before the Committee on Resources
Subcommittee on Energy and Mineral Resources**

**Hearing on *Opportunities for Good Samaritan Cleanup of Hardrock Abandoned Mine Lands*
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INTRODUCTION:

My name is Laura Skaer. I am the Executive Director of the Northwest Mining Association, a 112 year old non-profit mining industry trade association. Our offices are located in Spokane, Washington. NWMA has more than 1,300 members residing in 31 states and 6 Canadian provinces. Our members are actively involved in exploration, mining and reclamation operations on BLM and USFS administered land in every western state, in addition to private land. Our membership represents every facet of the mining industry, including geology, exploration, mining, reclamation, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-based membership includes many small miners and exploration geologists, as well as junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Our members have extensive first-hand experience with reclaiming active and inactive mine sites and remediating a variety of environmental conditions and safety issues at these sites.

Our members also have extensive knowledge of Abandoned Mine Lands (AMLs) in the U.S. Two of our members, Debra W. Struhsacker and Jeff W. Todd, researched and authored a study published in 1998 by the National Mining Association entitled “*Reclaiming Inactive and Abandoned Mine Lands – What Really is Happening.*” (A copy of this study is being included in the record). This study documents that the mining industry has spent tens of millions of dollars to cleanup numerous AMLs throughout the west. As evidenced by this report, the mining industry is ready, willing and able to play a significant role in cleaning up abandoned and inactive mines. We are here today to ask Congress to do its part and enact Good Samaritan legislation that will remove the legal liability hurdles and provide incentives for a variety of persons and entities to remediate and reclaim AMLs throughout the West.

Unfortunately, the number one impediment to voluntarily Good Samaritan cleanup of abandoned mine lands is the potential liability imposed by existing federal and state environmental laws, in particular the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (commonly known as Superfund), the Resource Conservation & Recovery Act (RCRA), and the Federal Toxic Substances Act. Under these laws and others, a mining company, individuals, or other entities that begin to voluntarily remediate an abandoned mine site could potentially incur “cradle-to-grave” liability under the CWA, CERCLA, and other environmental laws, even though it did not cause or contribute to the environmental condition at the abandoned mine land site.

Furthermore, they could be required under the CWA to prevent discharges to surface waters from the AML in perpetuity, unless those discharges meet strict effluent limitations and do not result in exceedences of stringent water quality standards, something that may not be possible; and in any event, may be so expensive that no company, individual, or other entity would undertake a voluntary cleanup.

Virtually everyone who has looked at the AML issue in the west has recognized and documented the legal impediments to voluntary cleanup of AMLs and have urged that those impediments be eliminated. These groups include the Western Governors Association, the National Academy of Sciences, and the Center for the American West.

The time has come for Congress to pass effective Good Samaritan legislation that will create a framework, with incentives and liability protection for numerous entities, including mining companies, local, state and federal agencies, NGO's, and tribes to voluntarily remediate of environmental problems caused by others at abandoned hardrock mine sites in the U.S.

Elements of Effective Good Samaritan Legislation:

To be effective, Good Samaritan legislation must embody the following key provisions:

1. **Mining companies that did not create environmental problems at an AML must qualify as Good Samaritans.** No one knows more about reclaiming and remediating mine sites than the mining industry. The mining industry has the desire, the resources, expertise, experience, and technology to effectively and efficiently assess the environmental and safety issues present at an AML and to properly remediate, reclaim and secure those sites. This often can be done in conjunction with reclamation activities at nearby active mines which the company operates, resulting in an efficient use of resources to improve the environment and enhance public safety.

For example, Teck Cominco American Incorporated purchased the Pend Oreille Mine in Pend Oreille County, Washington in 1996 and brought it back into production in 2004. It is located in a setting where a substantial amount of historical mining took place before there were environmental laws and regulations and modern mining practices. There are many abandoned mine sites in the area of the Pend Oreille Mine. In working with the local community, Teck Cominco determined that many of the old mine openings presented a potential hazard to public safety. Those that did not involve environmental issues were voluntarily closed through the installation of bulkheads in several of the openings.

Teck Cominco has been approached by state and federal agencies to see if it could process some of the historic waste rock piles, ore piles and concentrate accumulations in the area. In each and every case, the company chose not to undertake this cleanup effort due to the strict nature of its Clean Water Act authorization that prohibits any tailings other than those generated from the Pend Oreille Mine to be placed in the lined and approved tailings disposal facility. Furthermore, the company is reluctant to undertake cleanup efforts at any of these old sites for fear of being deemed an operator and incurring cradle-to-grave liability for the site under a variety of federal and state environmental laws.

All mines run out of ore and towards the end of production may look for additional sources of mineralized material to process. Having the ability to augment or extend the productive life of the mine benefits the mining company, the community and the nation. It also benefits the environment through metal source reduction as more metal will ultimately be recovered from the AML sites and the resulting tailings are placed in a regulated, engineered and permitted containment structure. This promotes conservation of the resource and sustainable development with a net improvement in the environment.

This is but one of many, many examples of sites throughout North America where existing mines are located adjacent to abandoned historical mines. Another example from the Northwest is Meridian Gold Company's Beartrack Mine near Salmon, Idaho. Deposits from historic mining were included on the mine property. As a result, Napias Creek no longer supported salmon habitat. Meridian used the equipment and personnel that were on-site at Beartrack to remove the tailings and waste rock piles from Napias Creek and fully remediate the site and restore the streambed to salmon habitat. The company won several environmental awards for their work. The mine was able to process tailings and waste rock materials from historic mining *located on the mine property* (emphasis added), at the Beartrack Mine, increase the ultimate recovery of metals from the mine and improve the environment. A scenario where everyone wins.

I have emphasized *located on the mine property* to highlight the important distinction between the Pend Oreille mine example and the Beartrack example. The Napias Creek tailings and waste rock piles were located on the mine property and covered by Beartrack's operating permits. The lack of effective Good Samaritan legislation has prevented, to date, the same win-win-win result at Pend Oreille.

In Nevada, the mining industry initially expressed interest, as Good Samaritans, in remediating and reclaiming several AMLs. The AML sites included Easy Junior, Elder Creek, Golden Butte, Ward, Mt. Hamilton, Griffon, Aurora Partnership, Kinsley, Norse-Windfall, Arimetco and Gold Bar.

In each case, the potential cradle-to-grave liability exposure under federal environmental laws prevented the mining industry from using its experience, expertise, technology, equipment and capital to remediate and reclaim the AML sites.

Four of the sites (Easy Junior, Golden Butte, Elder Creek and Ward) have been and/or are being remediated under the Army Corps of Engineers Restoration of Abandoned Mine Sites (RAMS) program. Sadly, as good as the RAMS program is, it is not adequately funded to perform complete reclamation to current mining industry standards. If there was effective Good Samaritan legislation in place, then these sites would have been closed by the mining industry, and the final result would have been more than the minimum needed to ensure basic environmental protection.

Some of the other sites have been closed and reclaimed in part using a combination of bond money and federal agency funding. Again, the lack of Good Samaritan legislation prevented industry from participating in the remediation, reclamation and closure of these sites.

2. A potential Good Samaritan must be able to gather the needed site characterization data to develop a technically sound remediation proposal without having to conduct a Potentially Responsible Party (PRP) search or go through a long, complicated and involved permitting process. A Good Samaritan must be able to conduct a site survey without the potential for becoming liable for the site solely by virtue of gathering data.

3. Individual Good Samaritan projects should be subject to review and authorization by the federal government or by an individual state's abandoned mine land program (and/or the environmental permitting authority for those states where EPA has delegated Clean Water Act authority). In addition to providing for review and authorization by EPA, the bill should authorize the Army Corps of Engineers' RAMS program to issue Good Samaritan permits. The chairman will recall that he authored the legislation that created the RAMS program in 1999 as part of that year's Water Resources Development Act (WRDA). Although the RAMS program has not been adequately funded, its stakeholder approach to remediating and restoring abandoned mine sites is a model that is well-suited for Good Samaritan cleanups.

Unfortunately, the RAMS program will sunset at the end of the next fiscal year if it is not reauthorized. The only reason the RAMS program has not been reauthorized is Congress has not passed a WRDA in six years. We urge the Chairman to communicate his support for RAMS to both the House and Senate authorizing committees for WRDA, or find a way to insert reauthorizing language in a bill that will move this year.

4. The Good Samaritan permitting process should include meaningful public input. The permit process also must be simple, straight-forward and understandable. The environmental requirements for a Good Samaritan project should be wrapped into a single permit. The permit should be approved only if the project is technically sound and promises overall improvement to the environment and/or securing of safety hazards.
5. The Good Samaritan must have full legal protection under the permit. That is, a Good Samaritan permit-holder must be able to obtain a specific, concrete list of the federal, state and local environmental laws that would be deemed satisfied by completion of the work authorized under the permit. One of the Good Samaritan bills introduced in the Senate, S. 1848, contains a list of federal environmental laws that is a good starting point.
6. Good Samaritan projects should be allowed as long as they result in an improvement to the environment, even if they will not result in the complete cleanup of all contaminants at an abandoned mine land site or the attainment of all otherwise applicable environmental standards, such as stringent water quality standards. To quote an oft-repeated phrase, "don't let pursuit of the perfect be the enemy of the good." An 85 percent improvement in water quality downstream from an AML site is a far better result than no cleanup due to a Good Samaritan's concerns that their cleanup activities may not be able to achieve water quality standards that would be applicable at a modern mine.
7. The permitting authority must be given discretion under any Good Samaritan legislation to make site-specific adjustments to environmental requirements, standards and liabilities arising under state and federal environmental laws that could otherwise be applicable and prevent Good Samaritans from undertaking remedial actions. This is not a new concept. The Applicable or Relevant and Appropriate (ARAR) approach under CERCLA might be a reasonable starting point.

The permitting authority also should have the discretion to waive the PRP search requirement. A Good Samaritan that is willing to spend private monies to remediate and reclaim an AML site should not have to spend time and resources conducting and certifying a PRP search. It should not matter whether there might be a PRP. The goal should be environmental improvement, not finding someone to blame.

8. Any Good Samaritan legislation, to be effective and result in actual, on-the-ground cleanup, must allow the reprocessing, remining, and reuse of ores, minerals, waste rock piles and other materials existing at an AML, even if this results in the mining company or other Good Samaritan recovering metals from such materials and making some cost recovery and perhaps a little profit on its Good Samaritan operations. Given the volatility and cyclical nature of metal prices, it is just as likely that the costs of any Good Samaritan project would exceed the revenue generated by removal and reprocessing. In any event, these activities should be allowed as part of a Good Samaritan project only if the overall result would be an improvement in environmental conditions at the site.

In many cases, processing tailings, waste rock piles and other historic mining materials at AML sites may be the most efficient and least costly means of cleaning up a site. The waste from any reprocessing or remining activities would then be disposed in compliance with current environmental standards and practices. The net result would be an efficient use of resources to increase the ultimate recovery of metals the U.S. needs for strategic and economic purposes while improving the environment.

AMLs are generally located in highly mineralized areas. Not only are these highly mineralized areas the location of historic mining, they are likely to be the location for future mines as prices and technology allow. A Good Samaritan project could lead to the discovery of a new mine, which would require the full NEPA and mine permitting process, and would be allowed only if the proposed new mine complied with all current standards of environmental protection. The mining industry has no desire to use Good Samaritan legislation to avoid the mine permitting process or the application of current environmental laws and regulations that apply to today's modern mines. The Good Samaritan permitting authority, through permit conditions, can easily prevent the misuse of a Good Samaritan permit.

The Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21(a)), specifically establishes the Congressional intent "to foster and encourage private enterprise in the development of economically sound and stable domestic mining, minerals, metal, and mineral reclamation industries." Including remining and reprocessing authority in Good Samaritan legislation is consistent with and promotes this Congressional intent.

We must ask ourselves what are the goals of Good Samaritan legislation? If a goal is to improve water quality, the environment and public safety by remediating and reclaiming Abandoned Mine Sites, which by definition have no current owner or financially responsible party, then Good Samaritan legislation must encourage and incentivize Good Samaritan cleanups. One way to do this is to allow the Good Samaritan to reprocess and remine.

9. Good Samaritan legislation should allow Good Samaritan actions at AMLs to qualify as off-site mitigation under the CWA for mining companies permitting new mines or expansion of existing mines. This would provide an additional incentive for a mining company to undertake a Good Samaritan cleanup while meeting the permitting requirements at new or expanded .

Superfund is Not the Answer:

Some Members of Congress and anti-mining groups argue that instead of focusing on Good Samaritan legislation, Congress should fund the Superfund program and EPA, under the Superfund program, should address all Abandoned Mine Lands. In our opinion, this is a wrong-headed approach to remediating and reclaiming historic abandoned mine lands.

Superfund does not have a very good track record at mine sites. Superfund was not designed to address natural processes that result in contaminated watersheds at AMLs. The historic mining communities of Aspen and Leadville in Colorado, Butte, Montana, Triumph, Idaho and the Bunker Hill site in northern Idaho's Silver Valley all have experienced first hand the failures of Superfund and the costly results of misguided policies and millions of dollars wasted on legal delays and repetitive studies. Of the billions of dollars spent of Superfund efforts, only 12% of those moneys have actually gone into cleaning up the environment while the balance went to legal and consulting fees.

In each of the Superfund sites cited above, the cleanup costs have exceeded reasonable estimates by a magnitude of three to five times. Bunker Hill is a prime example of the waste that occurs when an EPA-led Superfund effort is undertaken at mine sites. This can be demonstrated by comparing Bunker Hill with another example from the Silver Valley in northern Idaho.

Just outside the Bunker Hill Superfund site are many historic mining sites on Nine Mile and Canyon Creeks. Two mining companies working together with the State of Idaho were able to cleanup and remove historic mine wastes, tailings and waste rock piles from Nine Mile and Canyon Creeks, and restore fish habitat on the two creeks at cleanup costs one-fourth to one-fifth the cleanup costs incurred by EPA under Superfund on a per-cubic-yard of material removed basis.

I have visited these sites on at least three occasions and can personally testify to the outstanding remediation and reclamation on Canyon and Nine Mile Creeks, and that there has been substantial improvement in water quality as a result of these efforts. And, the work is done, unlike the work at Superfund sites which seems to never end.

There may be some sites for which Superfund is the appropriate remedy, but let's not limit the tools we have in the toolbox. Thoughtful and effective Good Samaritan legislation that encourages and incentivizes Good Samaritans is an important tool to add to the Abandoned Mine Land remediation and reclamation toolbox.

Current Good Samaritan Proposals:

Our members are familiar with all Good Samaritan legislation that has been drafted and introduced over the past ten years. While we applaud any and all efforts to advance the Good Samaritan concept, our analysis of most Good Samaritan legislation introduced is that it is not intended for use by the mining industry. This is especially true of the Administration's bill. This not only disappoints our members, it would be a huge opportunity lost for the nation and for the environment if mining companies were not allowed to utilize Good Samaritan legislation.

With respect to the two bills that have been introduced in the Senate, the Administration's bill introduced by Chairman Inhofe, and S. 1848 introduced by Senators Salazar and Allard from Colorado, we believe S. 1848 is clearly the better bill and is a good starting point. We also believe that S. 1848 can and should be improved to ensure that it results in on-the-ground Good Samaritan projects at AML sites. S. 1848 already incorporates many of the nine (9) concepts listed above, and could be improved by: 1) providing a mechanism for conducting site investigations without incurring environmental liability and without having to go through the full permitting process; 2) the PRP search should be significantly streamlined and eliminated when only private monies are funding the cleanup; and 3) any restrictions on the ability of a mining company or other Good Samaritan to remine, remove and reprocess ores and other waste materials from a mine site should be eliminated.

The Administration's bill, as currently drafted, is pretty much a non-starter for our members. The major problems our members have with this bill are: 1) the liability relief provision is too restrictive; 2) the PRP search requirements are too cumbersome and costly; 3) the permitting process is too complex and rigid; 4) a full PRP search and certification is required for privately funded cleanups; 5) the definition of a Good Samaritan is too limiting --merely appearing in the chain of title should not disqualify someone; and 6) there are too many restrictions on remining and reprocessing. Significant on-the-ground Good Samaritan activities at AMLs are not going to take place under the Administration's bill without significant changes.

CONCLUSION:

Industry wants to see abandoned mines cleaned up. After all, they are *our* dirty pictures, our Achilles Heel. Mining opponents use pictures of historic, unreclaimed abandoned mines to foment public opposition to new mine proposals. Industry wants to see AMLs remediated and reclaimed as much as anyone, but we need your help. The mining industry has the desire, the experience, the technology, the expertise and the capital to remediate and reclaim AMLs. In fact, the mining industry has more experience and expertise than all other potential Good Samaritans put together. Effective Good Samaritan legislation makes sense and can be a win-win-win-win for the environment, for the Good Samaritan, for the community, and for society. We applaud the Chairman for holding this hearing and look forward to working with him to produce Good Samaritan legislation that will actually result in on-the-ground Good Samaritan cleanups at Abandoned Mine sites.

I will be happy to answer any questions.