



Testimony of
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on Behalf of National Mining Association
before the
United States House of Representatives
Committee on Transportation and Infrastructure
Water Resources and Environment Subcommittee

*Abandoned Mines in the United States and Opportunities for Good
Samaritan Cleanups*

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Mr. Chairman, members of the committee: My name is Luke Russell. I am Vice President of External Affairs with Hecla Mining Company. I have a master's degree in mined land rehabilitation and have been involved in environmental compliance, reclamation and remediation at mine sites for over 30 years in the Western U.S., Alaska, New Zealand, Chile and Argentina. In addition, I worked as a remediation manager with the Idaho Department of Environmental Quality at the Coeur d'Alene Basin Superfund site, which is addressing numerous legacy mine sites in the fabled Silver Valley.

Hecla Mining Company is the oldest precious metals mining company in North America and was established in 1891 in northern Idaho's Silver Valley. It is the United States' largest primary silver producer and third largest producer of lead and zinc. The company has earned recognition for its reclamation programs by the state of Idaho for the rehabilitation and closure of its Yellow Pine Mine and Grouse Creek Mine.

Today I am testifying on behalf of the National Mining Association (NMA). NMA is a national trade association whose members include the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. NMA and its member companies have long been interested in promoting the voluntary cleanup of legacy mines – both inactive and abandoned mine lands (AMLs) – across our Nation. One way to accomplish this goal is through the development of Good Samaritan legislation that will create a framework for private and public parties to voluntarily cleanup the environmental problems associated with legacy mines without fear of perpetual liability.

Understanding Legacy Mining

Mining has helped to build the United States economy since the nation's founding. But for more than 100 years, mining activities were conducted without the benefit of modern environmental laws or requirements to properly close mines after operations ceased. Table 1 lists the dates of development of many of the major mining districts in the country compared to the dates of enactment of many of the federal and state environmental laws and regulations that govern hardrock mining activities. As is clearly seen from this table, mining in the U.S. dates back to the 1820s, with significant historic mine development throughout the remainder of the 19th century and into the early part of the 20th century. Many of the AML sites that need attention were created in this timeframe. At the vast majority of legacy mines, there are no financially viable owners, operators, or other responsible persons whom the federal government or the states can pursue in order to fund cleanup of these sites.

These early mining practices stand in stark contrast to modern mining. Today, mines are designed, built, operated, and closed using state-of-the-art environmental safeguards that minimize the potential for problems to develop during mining operations

and after mining is completed. Furthermore, a comprehensive framework of federal and state laws now applies to mining operations – from exploration through mine reclamation and closure – to control a project’s impacts to the land, to air and water quality, to fish and wildlife species and to historic properties surrounding the project site.

Importantly, post-mining reclamation and restoration is a requirement of modern mining. Federal and state regulations mandate that mined lands be reclaimed to specific performance standards, including the isolation, control and removal of acid-forming substances. Modern mining companies are also required by law to secure funds to ensure that reclamation can be completed in the event that an operator goes bankrupt or fails to perform the necessary work. In fact, modern mining companies have set aside billions of dollars for proper cleanup and closure of mine sites. For example, in 2011 the Bureau of Land Management (BLM), responding to Senator Lisa Murkowski (R-Alaska), indicated that BLM held \$1.7 billion of financial assurance and that since 1990, none of the 659 plans of operation for mine production authorized by the BLM have been placed on the Superfund National Priorities List (NPL). The U.S Forest Service responded there were 2,685 hardrock mines permitted since 1990 and again, none had been placed on the NPL. Thus, the AML problem is a finite and historical problem and not one that will grow in the future.

The Need for Good Samaritan Legislation

The federal government estimates that there are upwards of 500,000 abandoned mines in the United States.¹ While the exact extent of the problem is unknown (both in numbers and risk), the mining industry understands that at least some percentage of these AMLs are causing or contributing to the impairment of rivers, streams, and potential contamination of air and groundwater resources. The tragic release of an estimated 3 million gallons of contaminated water on Aug. 5, 2015, by the U.S. Environmental Protection Agency (EPA) at the inactive Gold King Mine in the historic mining area of Silverton, Colorado, is an important example of the complexities and risks involved in AML cleanup work. This serious event is also a testament to the need to secure and cleanup priority legacy mines across the country.

The lack of federal funding is often cited as the number one reason why AML sites go unaddressed. However, an equally if not more significant obstacle to completing this cleanup work is the threat of environmental liability. Public and private operators of AML sites face a risk of perpetual liability under provisions of the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act. For example, under the CWA a Good Samaritan that affects a discharge, even if working to improve site conditions, becomes fully responsible in perpetuity even if they had no role in creating the conditions that

¹ See Abandoned Mine Lands Portal, “Extent of the Problem,” *available at* <http://www.abandonedmines.gov/ep.html> (“There are estimates of as many as 500,000 abandoned mines in our nation.”).

originally caused the adverse water quality. A Good Samaritan also runs the risk of having to comply in perpetuity with all CWA requirements for any discharge from the site, including stringent effluent limitations and water quality standards.²

Consequently, remediation measures that could result in incremental (or in some cases significant) water quality improvements are not undertaken for fear of the resulting liability exposure. Furthermore, a Good Samaritan that begins to cleanup, or even investigates, an AML site runs the risk of being an “operator” under CERCLA, and could become liable for cleaning up all pollution at the site to strict Superfund standards. These are liabilities and regulatory responsibilities that mining companies and others will not voluntarily accept, particularly with respect to AMLs that are posing significant environmental problems.

The challenge then is to overcome these key obstacles and remove the sweeping legal barriers that prevent the successful cleanup of legacy sites. Good Samaritan policies offer a practical solution by encouraging volunteerism and collaboration among a diverse array of persons, ranging from local, state and federal agencies to citizen’s groups, non-governmental organizations, private landowners, and companies who have the expertise to complete this important work. Encouraging volunteerism also relieves taxpayers of a significant portion of the costs required for legacy site remediation. The mining industry is not alone in its support for Good Samaritan legislation. The Western Governors' Association (WGA), the National Academy of Sciences, and the Center of the American West have all recognized that voluntary efforts to clean up AMLs are significantly impeded by federal and state environmental laws.³ The collective conclusion is that legal impediments must be removed in order to spur important cleanup activities at legacy mines across the country.

² While EPA attempted to address some of these concerns in a memorandum to its Regional Administrators on Dec. 12, 2012, by clarifying the applicability of National Pollutant Discharge Elimination System requirements under Section 402 of the CWA to the activities of Good Samaritans and to their potential for long-term liability under the CWA, it did not provide the legal certainty or protection that Good Samaritans need to comfortably conduct voluntary cleanups of AML sites.

³ See Western Governors’ Association, Policy Resolution 13-05, Cleaning Up Abandoned Mines in the West, available at <http://www.westgov.org/policies/305-mining/615-cleaning-up-abandoned-mines-in-west-wga-resolution> (last visited Oct. 19, 2015); Western Governors’ Association & National Mining Association, Cleaning Up Abandoned Mines: A Western Partnership at 8 (1998) (available upon request); National Research Council, Hardrock Mining on Federal Lands at 72 (1999), reproduced at <http://www.nap.edu/catalog/9682/hardrock-mining-on-federal-lands> (last visited Oct. 19, 2015); Center of the American West, Cleaning Up Abandoned Hardrock Mines in the West at 20-24 (2005), available at <http://www.centerwest.org/publications/pdf/mines.pdf> (last visited Oct. 19, 2015).

Elements of Effective Good Samaritan Legislation

Efforts to enact Good Samaritan legislation have been ongoing in the Congress for over a decade. It has become clear to NMA and its members that, in order to be effective, Good Samaritan legislation must include a number of elements.

Mining companies must be allowed to qualify as Good Samaritans. Mining companies that did not create environmental problems at the identified legacy site should be allowed to qualify as Good Samaritans. Mining companies have the resources, know-how and technology to properly assess environmental dangers posed by legacy sites, and to efficiently remediate such sites. Indeed, to the extent that AMLs are located near active mining operations, a mining company would be in the best position to efficiently use equipment and personnel from its current operations, including its current reclamation operations, to remediate or reclaim a nearby AML. The WGA recognizes the importance of mining companies volunteering to address legacy sites, acknowledging that it is “likely the best suited industry in terms of equipment, technology and expertise, from improving conditions at abandoned mine sites.”⁴

As an example, while I was working with Coeur d’Alene Mines the company expanded its Rochester Mine in Nevada to develop the Nevada Packard open pit mine. Nevada Packard had been mined historically several times. The site had been “abandoned” and included relic tailings in the flood plain from early milling operations and an abandoned heap leach pad and process ponds from more recent mining activity. Coeur Rochester removed the heap leach material and placed it on their modern heap leach pads, reclaimed the pads and process ponds, and reclaimed the historic mill tailings as an environmental enhancement project with the mine expansion.

EPA or States must authorize Good Samaritan projects. Individual Good Samaritan projects should be reviewed and authorized by the EPA, or by a state implementing a delegated program, after adequate opportunity for public notice and comment. Good Samaritan projects should be reviewed on a site-by-site basis with discretion to allow important environmental improvements that may fall short of addressing all contaminants at a site or the achievement of all otherwise applicable environmental standards, so long as net improvements are achieved.

EPA or States must be given discretion, on a case-by-case basis, to revise the regulatory and/or liability provisions of federal and state environmental law that might otherwise apply to the Good Samaritans. As previously discussed, the main obstacles to mining companies and others to conducting voluntary cleanups at legacy mine sites are the potential liabilities and requirements derived from federal and state environmental laws. In the past, NMA members have considered taking actions to voluntarily address pollution at certain inactive sites near active operations throughout

⁴ See Western Governors’ Association, Policy Resolution 13-05, Cleaning Up Abandoned Mines in the West, available at <http://www.westgov.org/policies/305-mining/615-cleaning-up-abandoned-mines-in-west-wga-resolution> (last visited Oct. 15, 2015).

the West, but ultimately declined to do so because of the potential liability concerns under federal environmental laws. To remove barriers to willing experts that want to voluntarily cleanup AML sites, federal and state environmental regulators should be given discretion to adjust environmental requirements, standards, and liabilities for Good Samaritan projects. This discretion should apply to the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. Since the environmental characterization of each site will vary drastically, the permit-writer must be given the discretion to tailor the permit to the specifics of the site. Bottom line is that Good Samaritans, mining companies and others, need assurance that they will not be subject to lawsuits after-the-fact for having done exactly what was permitted by EPA or the delegated state authority.

While not a typical Good Samaritan project, the following example shows what can be done when companies are assured liability protection for their remediation work on legacy mine sites. Just outside the Bunker Hill Superfund site are many historic mining sites on Nine Mile and Canyon Creeks. Hecla worked with the Silver Valley Natural Resources Trust (SVNRT) that was created following a settlement between the State of Idaho and several other potentially responsible parties. Hecla allowed the SVNRT access to its lands for remediation of the Canyon Creek floodplain and agreed to assume the long term operation and management of two on-site repositories and in return received a liability release for this work. The SVNRT was 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. The work of the SVNRT is a prime example of the efficiencies that private and public entities can achieve when they work together. While this was the first step in the remediation process there has been substantial improvement in water quality as a result of these efforts.

Good Samaritan legislation must allow remedial actions that include the reuse or reprocessing of materials from legacy sites. Abandoned hardrock mines pose a variety of environmental and safety problems throughout the West. They also call for a variety of cleanup measures. At some sites, the physical removal of wastes and their disposal off-site may be the appropriate solution. At other sites, it may be a matter of diverting stormwater or drainage away from wastes and materials that are highly mineralized. And yet, at other sites, the best, most efficient and least costly way to partially or wholly remediate the environment may be to collect the various wastes and materials located at the site, utilize them in construction of a new mining operation or even process those wastes and materials to remove any valuable minerals contained in them, and then to dispose of the wastes from the reprocessing operation in an environmentally-sound manner. AML sites are located in highly mineralized areas – that is why mining occurred at those sites in the first place. Often, materials and wastes abandoned by historic mining operations have quantities of a desired metal (such as copper, silver, zinc or gold) that can be recovered with modern mining technology. Allowing the mining

company – particularly a company with operations nearby to an AML – to utilize or process such materials and wastes as part of the Good Samaritan project would provide a financial incentive for mining companies to remediate such sites and provide environmental enhancement at no cost to the public.

While some groups are opposed to this concept and believe that a mining company would misuse Good Samaritan legislation as a way to engage in new mining without having to comply with environmental laws, this is simply not true. NMA member companies have no plans to utilize Good Samaritan legislation to undermine application of all legitimate mining projects. Plus, they would not be allowed to misuse Good Samaritan legislation under our proposal. Good Samaritan projects could not proceed without a permit. Prior to issuing a permit, the regulatory agency will certainly be aware – and if they are not, the public would make them aware – if a given project is in fact a stand-alone economically viable project that the mining company would undertake without Good Samaritan protections. The permit-writer will also know whether what is being authorized is focused on remediating existing pollution, or whether the project is a for-profit operation operating under the guise of cleanup. The permit ensures that the Good Samaritan project is subject to a thorough assessment and approval process.

Conclusion

Protecting the public interest and ensuring more effective and efficient cleanup of legacy sites created in the distant past is possible, but only if Good Samaritan legislation embodies the elements discussed above is enacted. It is time to tap into the expertise of the mining industry, local and regional community organizations, and others to solve this problem by recognizing that interested stakeholders will not undertake or invest in beneficial remediation actions if the cloud of liability remains. NMA supported S. 1848 from 2006, bi-partisan Good Samaritan legislation sponsored by Colorado Senators Allard and Salazar. S. 1848 would be one place to start in crafting Good Samaritan legislation.

Thank you for the opportunity to testify today.

TABLE 1 Partial Chronology of U.S. Mining versus Enactment Dates for Environmental Laws and Regulations Affecting Hardrock Mining		
Decade	Commencement of Selected Western Mining Activities	Enactment Dates for State & Federal Environmental Laws and Regulations
1840s	CA: Mother Lode—gold WY: Atlantic City – gold	
1850s	CO: Cherry Creek, Clear Creek, – gold NV: Comstock Lode - silver & gold WA: Okanogan District – gold	
1860s	CO: Front Range – gold & silver ID: Boise Basin – gold	
1870s	SD: Black Hills - gold CO: Leadville, San Juan Mountains – silver, gold & base metals AZ: - Superior, Morenci - copper NM: Silver City – silver UT: Park City – gold, silver, lead	
1880s	CO: Aspen – silver, lead, zinc MT: Butte – copper ID: Coeur d'Alene District – silver NM: Socorro— silver, copper	
1890s	CO: Cripple Creek – gold WA: Republic District – gold AK: Klondike, Nome - gold WY: Kirwin – copper, silver	
1900s	UT: Bingham Canyon – copper NV: Round Mtn., Tonopah, Goldfields, Ely: – gold, silver copper	
1910s	CO: Climax - molybdenum CO, UT - AZ vanadium, radium	
1930s	NM: Pecos – silver, zinc, lead ID: Stibnite – antimony, tungsten	
1940s	CO, UT, AZ, NM: CO Plateau - uranium	
1950s	NM: Grants – uranium WY Sandstones - uranium NV: Yerington – copper OR: Riddle - nickel	
1960s	NV: Carlin – gold	<ul style="list-style-type: none"> •National Historic Preservation Act •Air Quality Act •National Environmental Policy Act
1970s	CO: Henderson - molybdenum NV: Round Mountain – gold	<ul style="list-style-type: none"> •Occupational Safety and Health Act •Clean Air Act •CA Environmental Quality Act •MT Metal Mine Reclamation Act •MT Environmental Policy Act •Federal Water Pollution Control Act/Clean Water Act •Endangered Species Act

TABLE 1 Partial Chronology of U.S. Mining versus Enactment Dates for Environmental Laws and Regulations Affecting Hardrock Mining		
Decade	Commencement of Selected Western Mining Activities	Enactment Dates for State & Federal Environmental Laws and Regulations
1970s (cont.)		<ul style="list-style-type: none"> •U.S. Forest Service 36 CFR 228A regs •CA Surface Mined Land Reclamation Act •Federal Land Policy and Management Act •Resource Conservation and Recovery Act •Clean Water Act Amendments •CO Mined Land Reclamation Act •Mine Safety and Health Act •Surface Mining Control and Reclamation Act •WI Metallic Mining Reclamation Act •ID Surface Mining Act •Archaeological Resources Protection Act
1980s	NV: Jerritt Canyon, Sleeper, Gold Quarry, Goldstrike, Chimney Creek – gold ID: Thompson Creek – molybdenum CA: McLaughlin - gold MT: Stillwater – platinum/palladium	<ul style="list-style-type: none"> •Comprehensive Environmental Response, Compensation, and Liability Act/Superfund •BLM 43 CFR 3809 Regulations •SD Mined Land Reclamation Act •Hazardous and Solid Waste Amendments •Superfund Amendments Reauthorization Act •UT Mined Land Reclamation Act •NV Water Pollution Control Law •NV Mined Land Reclamation Act
1990s	AK: Ft. Knox – gold NV: Pipeline, Lone Tree - gold	<ul style="list-style-type: none"> •Clean Air Act Amendments •NM Mining Act
2000s	NV: Marigold expansion, NV – gold NV: Phoenix Project – gold NM: Copper Mtn. South expansion – copper AZ: Carlota, Safford – copper	<ul style="list-style-type: none"> •BLM updates 43 C.F.R. 3809 regulations to include mandatory bonding requirements for all surface-disturbing activities •USFS updates bonding requirements •NV expands and updates bonding requirements •MT updates bonding requirements