

**Ms. Laura Skaer  
Executive Director  
Northwest Mining Association  
10 N. Post Street, Suite 220  
Spokane, WA 99201**

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

**Legislative Hearing on HR 2262 – Royalties and Abandoned Mine Reclamation  
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## **INTRODUCTION AND EXECUTIVE SUMMARY**

My name is Laura Skaer. I am the Executive Director of the Northwest Mining Association, a 113 year old non-profit mining industry trade association. Our offices are located in Spokane, Washington. NWMA has more than 1,650 members residing in 35 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 safety issues and environmental conditions at these sites.

Our members also have extensive knowledge of the scope of, and potential dangers posed by, hardrock abandoned mine lands (AMLs), as well as experience and expertise in dealing with those dangers. As I discuss below, AMLs in need of significant remediation are limited in number and not expected to increase. They comprise mines that were developed and abandoned before the advent of modern environmental laws in the 1970s and 1980s, and regulations that were updated as recently as 2001, including current comprehensive regulatory programs at both the federal and state levels that require mining companies to provide financial assurance to ensure that, at the end of exploration and/or mining operations, sufficient funds will be available to reclaim the sites if the operator becomes bankrupt or otherwise is unable to reclaim the sites.

Moreover, the Western Governors Association (WGA), the Bureau of Land Management (BLM), the US forest Service (USFS) and the non-partisan Center of the American West are all agreed that the vast majority of AMLs pose no dangers or, at most, safety rather than significant environmental hazards.

That being said, the mining industry supports the creation of a new federal AML fund, to be financed from royalties owing under any mining law legislation enacted by the Congress, to augment the monies available to State AML funds to address safety and, where needed, environmental hazards at AML sites. The industry also continues to strongly support the enactment of comprehensive Good Samaritan legislation that would allow mining companies with no previous involvement at an AML site to voluntarily remediate and reclaim that site, in whole or in part, without the threat of potentially enormous liability under CERCLA, the Clean Water Act, and other federal and state environmental laws.

The mining industry has long been front and center in trying to deal responsibly with AMLs. Some of these efforts are documented in a study researched and authored by two of our members, Debra W. Struhsacker and Jeff W. Todd, and 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 and is hereinafter cited as the “NMA Study”). This study presents compelling evidence that given the right opportunity, the mining industry can play a significant role in eliminating the safety hazards and improving the environment at abandoned and inactive mines.

## **ABANDONED MINE LANDS ARE HISTORIC**

It is important to understand that when we talk about hardrock abandoned mine lands we are talking about a problem that was created in the past due to mining practices used at sites that were mined prior to the enactment of modern environmental laws and regulations. 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 19<sup>th</sup> century and into the early part of the 20<sup>th</sup> century. Many of the AML sites that need attention were created in this timeframe.

It also is important to note during World Wars I and II, the federal government took over operations at many mines to produce the metals and minerals necessary for the war efforts. The focus was on maximizing production and winning the war – not on using mining methods that were designed to protect the environment. The metals mined from these sites greatly benefited U.S. society by contributing to the country's victories in both wars. What we are left with today, however, are the environmental impacts created by these unregulated mining activities. Some of these war-efforts mines are now abandoned. Because the American public benefited in the past from mining of these sites, we now have a public responsibility to develop policies and funding mechanisms to reclaim these sites.

Modern mining started in the mid-1960s at about the same time that the country was developing an environmental awareness and when Congress was starting to enact environmental laws. Thus, as is readily apparent from Table 1, the U.S. environmental statutory and regulatory framework is a recent development compared to the history of mining in the U.S. Moreover, it is important to recognize that many of the laws and regulations governing hardrock mining are quite new – some are less than 20 years old. For example, Nevada's state reclamation law went into effect in 1990, only 17 years ago. BLM's regulations for hardrock mining, the 43 C.F.R. Subpart 3809 program, went into effect in 1981 and were substantially updated just six years ago in 2001.

The body of federal and state environmental laws and regulations shown in Table 1 has had a significant and positive impact on the way mining is now conducted in the U.S, resulting in a substantial reduction in environmental impacts and dramatic improvements in reclamation. As a result of these laws and regulations, the domestic hardrock mining industry of today is highly regulated and environmentally and socially responsible. Also, because these regulations require exploration and mining companies to provide financial assurance to guarantee reclamation at the end of the project, mines today will not become future AML sites. In the event a company goes bankrupt or defaults on its reclamation obligations, state and federal regulatory agencies will have bond monies that will be available to reclaim the site. Thus, the AML problem is a finite and historical problem and not one that will grow in the future.

As shown in Table 1, the US Forest Service adopted the 36 C.F.R. Part 228A surface management regulations governing hardrock mining operations on National Forest Lands in 1974. Six years later, in 1980, BLM enacted the 43 C.F.R. Subpart 3809 surface management regulations, which were substantially expanded and updated in 2000 and 2001. Both BLM's 3809 regulations and the U.S. Forest Services' 228A regulations require that all exploration and mining activities above casual use provide federal land managers with adequate financial assurance to ensure reclamation after completing the exploration or mining project. Because the underlying purpose of the financial assurance requirement is to ensure reclamation of the site in the event an operator goes bankrupt or fails to reclaim a site for some other reason, the amount of required financial assurance is based on what it would cost BLM or the U.S. Forest Service to reclaim the site using third-party contractors to do the work.

In addition to mandating reclamation and establishing financial assurance requirements, these comprehensive federal regulations also require compliance with all applicable state and federal environmental laws and regulations to protect the environment and to meet all applicable air quality, water quality and other environmental standards.

Additionally, all western public land states have enacted comprehensive regulatory programs that govern hardrock mining operations in their respective state. Like the federal financial assurance requirements, these state regulatory programs require the posting of adequate financial assurance or reclamation bonds

in an amount equal to the cost that would be incurred by the government if it had to contract with a third party to remediate and reclaim the site. In many states, federal and state regulators with jurisdiction over mining work together to jointly manage the reclamation bonding programs. For example, in Nevada, the BLM, the U.S. Forest Service and the Nevada Division of Environmental Protection/Bureau of Mining Regulation and Reclamation have entered into a Memorandum of Understanding (MOU) that establishes procedures for coordinating the federal and state regulatory programs for mining. This MOU specifies that the federal and state agencies will work together to review reclamation cost estimates and to agree upon the required bond amount.

<b>Table 1</b>		
<b>Chronology of U.S. Mine Development and Enactment of Environmental Regulations</b>		
<b>Year</b>	<b>Commencement of Mining Activities</b>	<b>Enactment of State and Federal Environmental Laws Affecting Mining</b>
<b>Historic Mining</b>		
1825	Upper Mississippi Valley lead mining (Southwestern Wisconsin and adjacent Iowa and Illinois)	
1849	California - gold mining	
1858	Colorado - precious metals mining	
1859	Nevada - Comstock Lode silver and gold mining	
1862	Montana - gold mining	
1863	Utah - copper mining	
late 1860s	Upper Mississippi Valley zinc mining (Southwestern Wisconsin and adjacent Iowa and Illinois)	
1875	South Dakota - Black Hills gold mining	
1877	Colorado - base metal mining	
1877	Arizona - copper mining	
1882	Montana - copper mining	
1906	First gold produced from Round Mountain, NV	
1917	Colorado - molybdenum mining	
<b>Modern Mining</b>		
1965	Nevada - Carlin-type gold mining started	
1966		National Historic Preservation Act

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<b>Year</b>	<b>Commencement of Mining Activities</b>	<b>Enactment of State and Federal Environmental Laws Affecting Mining</b>
1967		Air Quality Act
1969		National Environmental Policy Act (NEPA)
1970		Occupational Safety and Health Act (OSHA)  Clean Air Act
1971		CA Environmental Quality Act (CEQA)  MT Metal Mine Reclamation Act  MT Environmental Policy Act (MEPA)
1972		Federal Water Pollution Control Act/Clean Water Act
1973		Endangered Species Act
1974	Mining begins at Henderson, CO	U.S. Forest Service Mining Regulations
1975	Modern mining begins at Round Mountain, NV	CA Surface Mined Land Reclamation Act (SMARA)
1976		Federal Land Policy and Management Act (FLPMA)  Resource Conservation and Recovery Act (RCRA)  Clean Water Act Amendments  CO Mined Land Reclamation Act
1977		Mine Safety and Health Act (MSHA)  Surface Mining Control and Reclamation Act (SMCRA)  WI Metallic Mining Reclamation Act  ID Surface Mining Act
1979		Archaeological Resources Protection Act
1980	Mining begins at Jerritt Canyon, NV	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA – Superfund)
1981		U.S. Bureau of Land Management Hardrock Mining Regulations
1982		SD Mined Land Reclamation Act
1984		Hazardous and Solid Waste Amendments
1985	Mining begins at McLaughlin, CA	
1985	Mining begins at Sleeper Mine, NV	

<b>Year</b>	<b>Commencement of Mining Activities</b>	<b>Enactment of State and Federal Environmental Laws Affecting Mining</b>
1986	Mining begins at Goldstrike Mine, NV	Superfund Amendments and Reauthorization Act
1987	Mining begins at Stillwater Mine, MT	UT Mined Land Reclamation Act
1989		NV Water Pollution Control Law  NV Mined Land Reclamation Act
1990 - Present	On going development of Nevada's gold mining industry	Clean Air Act Amendments
2001		Updating of BLM's 43 C.F.R. 3809 regulations to include mandatory bonding requirements for all surface-disturbing activities

In 1999, the National Academy of Sciences National Research Council, in response to a request from Congress to assess the adequacy of the regulatory framework for hardrock mining on federal lands, found that “[t]he overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated, but generally effective.” Thus, these state and federal comprehensive regulatory programs together with financial assurance requirements work together to ensure that modern mining is environmentally responsible and that today’s mines will be reclaimed.

**THE VAST MAJORITY OF AML SITED DO NOT POSE SIGNIFICANT ENVIRONMENTAL PROBLEMS**

It is important to understand that the vast majority of all hardrock AML sites are not problematic. The 1998 WGA report mentioned above estimated that more than 80% of AML sites create neither environmental nor immediate safety hazards. Where problems do exist, safety hazards are the primary problem although some AML sites have both environmental and safety issues.

The Center of the American West released a study in 2005 entitled “Cleanup of Abandoned Hardrock Mines in the West.” The Center, which is affiliated with the University of Colorado, states at page 31 of its report that “only a small fraction of the 500,000 abandoned mines [identified by the Mineral Policy Center] are causing significant problems for water quality.”

The 2007 USFS/BLM report cited above estimates that as many as 10% of the AML sites on USFS- or BLM-managed land may include environmental hazards and that the balance, or approximately 90%, are landscape disturbances or safety hazards. The finding that landscape disturbance and safety hazards comprise the bulk of the AML problem is consistent with other reports.

Although much of the public debate about the AML problems typically focuses on environmental issues, it is really safety hazards that deserve our immediate attention. Nearly every year, the country experiences one or more tragic accident or fatality at an AML site where somebody has fallen into or become trapped in an unreclaimed historic mine opening. AML safety hazards pose a far greater risk to the public than AML environmental problems. Therefore, we should focus first-priority AML funds on eliminating safety hazards at abandoned mine sites located near population centers and frequently used recreation areas. The 1998 NMA Study includes a comprehensive discussion of the types of safety hazards and environmental problems that exist at AML sites. Table 2 summarizes this discussion and lists the safety

hazards and environmental problems that may occur at AML sites and the techniques used to address these hazards and problems. As stated above, landscape disturbances and safety hazards are the dominant problem at most AML sites. However, some sites may have a combination of landscape disturbance, safety hazards, and environmental problems.

<b>Table 2 Generalized Characterization of Issues at AML Sites</b>	
<b>Types of AML Problems</b>	<b>Examples of Typical Response Measures</b>
<p><b>Landscape Disturbances</b></p> <ul style="list-style-type: none"> <li>• Surface Disturbance that detracts from the aesthetic or natural appearance of the site,</li> <li>• Discarded equipment, abandoned buildings in disrepair</li> </ul>	<ul style="list-style-type: none"> <li>• Regrading and recontouring disturbed areas to blend in with the surround topography</li> <li>• Revegetating regraded areas with native species</li> <li>• Removing and properly disposing of discarded materials</li> <li>• Dismantling and disposal of buildings</li> </ul>
<p><b>Safety Hazards</b></p> <ul style="list-style-type: none"> <li>• Unrestricted and hazardous openings (shafts, adits, portals, stopes)</li> <li>• subsidence features and exploration excavations</li> <li>• Dangerous highwalls and open pits</li> <li>• Unsafe structures and dilapidated buildings</li> </ul>	<ul style="list-style-type: none"> <li>• Partial or complete backfilling of mine openings</li> <li>• Installation of gates, grates, and doors to impede access into mine openings,</li> <li>• Fencing around mine openings and hazardous highwalls and open pits</li> <li>• Signage to warn the public to avoid dangerous mine openings and highwalls</li> <li>• Removal of unsafe buildings.</li> </ul>
<p><b>Environmental Problems</b></p> <ul style="list-style-type: none"> <li>• Erodible waste rock dumps, tailings deposits, and smelter wastes</li> <li>• Acid rock drainage form mine openings, waste rock dumps, and tailings deposits</li> <li>• Blowing dust from tailings piles</li> <li>• Contaminated soils,</li> <li>• Chemical contamination from processing reagents</li> </ul>	<ul style="list-style-type: none"> <li>• Removing mine wastes and contaminated soils and placing in an authorized engineered structure,</li> <li>• Stabilizing the wastes in-situ with engineered covers to prevent wind erosion and to minimize infiltration of precipitation</li> <li>• Rerouting drainages to avoid contact with mine wastes</li> <li>• Installing plugs in portals with drainage</li> </ul>

Although many of the above listed measures are expensive – especially those used to remediate environmental problems – they are technically straightforward, well understood, and are generally quite effective in improving environmental conditions at AML sites. The NMA Study identified a number of AML sites with safety hazards and/or environmental problems that were substantially reduced through the use of one or more of the measures listed in Table 2. It is important to understand, however, that each AML site is different. The measures shown in Table 2 to address landscape disturbance, safety hazards, and environmental problems at an AML site must be custom-tailored to fit the site-specific conditions of a particular site. A cookie-cutter, one-size-fits all approach will not achieve optimal results and may even fail to address the problem.

AML policy discussions have had a tendency to focus on the worst and most complex AML sites. This mischaracterization of the global AML problem has probably contributed to the lack of progress in developing federal policies and programs to solve the AML problem. The legislative dialogue about

enacting Good Samaritan legislation has perhaps been made more difficult by focusing on sites with very serious or complex environmental and liability issues such as sites with acid drainage from underground mine openings which typically require extensive and costly remediation efforts. Although this type of site is serious and deserving of our immediate attention, it is not representative of the safety and environmental concerns at most AML sites. NWMA urges the Congress to take a closer look at the universe of AML sites in developing a Hardrock AML program and in addressing Good Samaritan legislation. Focusing solely on the most challenging AML sites is likely to produce programs with unwarranted complexity and costs.

## **HOW MANY AML SITES ARE THERE?**

Historic abandoned hardrock mines have long been an issue of concern to industry, government and the public. Nearly everyone – especially the mining industry – agrees that eliminating AML sites is an important public policy objective. Past estimates of the scope of the historic AML problem range considerably, with various state and federal agencies and NGOs, estimating the number of unreclaimed hardrock mining sites. Part of the reason for the apparent disparity in these estimates is that these inventories have defined the term “site” in an inconsistent manner. Some AML inventory efforts have considered a “site” to be any single opening, mining or exploration disturbance or mining related feature. Other state AML programs and the mining industry define “site” to include multiple features that can be addressed with coordinated and consolidated reclamation and remediation measures. Continued debate over a universal definition of AML “site” and development of a comprehensive hardrock AML inventory diverts attention and resources from the real issues that need to be addressed. Moreover, the progress being made in reclaiming AML sites demonstrates that it is not necessary to count every site prior to designing effective programs to address the problem.

In 1998, the Western Governors Association compiled an inventory of hardrock AML sites. This effort confirmed the results of earlier efforts—because each hardrock AML site varies in geology, geography, climate, terrain, hydrology, and types of AML features, and because there are different definitions of what constitutes an AML site, it is very difficult, if not impossible to produce a complete inventory of hardrock AML sites.

The most recent estimate of the number of AML sites is the just released U.S. Forest Service/ BLM report entitled *Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines*. This report estimates that there are approximately 47,000 abandoned mine sites on more than 450 million acres of federal land managed by those two agencies.

While the desire to have a complete inventory of hardrock AML sites in the western US was perhaps an appropriate focus ten or fifteen years ago, we believe that enough is now known about the scope of the problem. This knowledge coupled with the fact that on-the-ground progress is being made towards solving the problem suggests to us that inventory efforts have reached a point of diminishing returns – it is time to stop counting sites and to focus all of our energy upon reclaiming them. Further efforts to develop a comprehensive inventory will not add much value or contribute anything new to solving the AML problem. The focus should thus be on-the-ground remediation and reclamation of known hardrock AML sites. We therefore urge this Subcommittee to eliminate or modify the provision in H.R. 2262 Section 403(c) that requires the Secretary to develop another AML inventory.

## **CURRENT HARDROCK AML PROGRAMS**

Every western public land state, the BLM, the Forest Service, and the Army Corps of Engineers have abandoned mine land programs that address abating safety hazards, remediating environmental problems, and reclaiming disturbed landscapes associated with abandoned hardrock mining sites. The 1998 NMA Study cited above found that

. . . state AML programs and industry-sponsored efforts have abated, reclaimed and remediated a number of high priority AML sites throughout the west. Private funding, equipment and labor for mining companies have been responsible for reclaiming and remediating many AML sites. Mining companies have spent tens of millions of dollars of voluntary on-the-ground cleanups and abatements of AML sites. (NMA Study at ES-2)

The Nevada Division of Minerals Abandoned Mine Lands program is representative of an effective state AML program. Nevada's AML program receives funding from a \$1.50 fee on county mining claim filings and a one-time fee of \$20 per acre of new permitted mining disturbance. The program is supplemented by small grants from BLM's abandoned mines program. In 2006, Nevada's AML program secured 540 hazards with approximately \$350,000 in funding. The bulk of the work includes fencing or closing mine openings on federal public land. Since the inception of the program in 1987, the Nevada Division of Minerals has secured over 9,000 dangerous abandoned mine openings.

The Nevada Division of Minerals also serves as lead coordinator of the Nevada Abandoned Mine Land Environmental Task Force. The task force was formed in 1999 and is comprised of 13 state and federal agencies. The task force has overseen reclamation activities at 21 abandoned mines sites. The Army Corps of Engineers Restoration of Abandoned Mine Sites (RAMS) program has provided \$4 million since 2000 to support development of closure plans and small, innovative, on-the-ground demonstration projects related to AML remediation and reclamation.

In addition to these efforts, a partnership, known as the Nevada Mine Backfill Program, between the BLM, the Division, the Nevada Mining Association and member companies, and others has resulted in the backfilling of 265 hazardous mine openings in Clark, Esmeralda, Nye and Washoe counties since 1999. This program received the Northwest Mining Association's Environmental Excellence Award in 2000 for protecting public health, safety and the environment through government/industry cooperation.

As demonstrated by the Nevada AML programs, much progress has been made by existing state AML programs, the BLM, USFS, RAMS and the industry. Mr. Tony Ferguson, Director of Minerals and Geology Management, USFS will be testifying to the excellent progress the BLM and USFS have made over the past decade in remediating and reclaiming abandoned mine sites.

## **INDUSTRY SUPPORTS CREATING A FEDERAL HARDROCK AML FUND**

The mining industry supports creating a federal hardrock AML fund using revenue generated from a net royalty on new claims to support, augment and expand the existing AML programs that have proven to work. The fund also should allow for donations by persons, corporations, associations and foundations, and other monies that are appropriated by the Congress of the United States. These funds should be distributed to the states with hardrock AMLs to be administered by the respective state AML program. States that generate royalty revenues should be the first in line to receive federal AML funds.

While federal oversight might be appropriate, we do not support the establishment of a new, separate federal hardrock AML program or delegating the responsibility for hardrock AML remediation and reclamation to the Office of Surface Mining. This would be an inefficient use of the monies collected and would prevent the maximum amount of money going into on-the-ground remediation and reclamation. Hardrock AML sites are unique in their geology, geography, terrain and climate and a uniform, one-size-

fits-all program will not work. The state AML programs are in the best position to prioritize where federal AML funds should be spent within the state and to carry out hardrock AML hazard abatement, remediation and reclamation, in cooperation with the industry and other groups, including NGOs. The NMA Study describes a streamlined interagency regulatory approach that was in place at the time in South Dakota that proved to be particularly effective in facilitating AML cleanup activities by minimizing protracted regulatory reviews and permit requirements and emphasizing on-the-ground measures.

## **THE NEED FOR GOOD SAMARITAN LEGISLATION**

Although, as discussed above, some progress has been made by industry and existing State and federal AML programs in reducing safety hazards and remediating and reclaiming hardrock AMLs, the number one impediment to voluntarily cleanup of hardrock 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 Toxic Substances Act. Under these laws, a mining company, state or federal agency, NGOs, 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 they 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 adopt the recommendation from the National Academy of Sciences National Research Council’s 1999 report to Congress and enact 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, NGOs, and tribes to voluntarily remediate of environmental problems caused by others at abandoned hardrock mine sites in the U.S. Several Good Samaritan bills have been introduced in the past, but only S. 1848, introduced last year by Senators Salazar and Allard, passed out of committee. We strongly supported, and continue to support the Salazar/Allard approach to Good Samaritan legislation.

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.

In some 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 of in a modern engineered facility that complies with current environmental standards and practices. Remining/reprocessing is thus an environmental remedy in the form of resource recovery and source reduction, both of which are EPA-favored responses for

environmental cleanups and waste management. 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.

Given the desirability of achieving the resource recovery and source reduction that can result from reprocessing and remining, Good Samaritan legislation should 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.

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.

## **SUPERFUND IS NOT THE ANSWER**

Some Members of Congress and NGOs argue that instead of enacting Good Samaritan legislation, Congress should fund the Superfund program and EPA, under the Superfund program, should address all hardrock abandoned mine lands. In our opinion, this is an inappropriate, inefficient, and costly approach to remediating and reclaiming historic abandoned mine lands. Moreover, the Superfund program is clearly not designed to address the most pressing and prevalent AML problem – abatement of safety hazards.

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 noted above, cleanup has cost three to five times more than reasonable estimates of what it should have cost. 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.

There are many historic mining sites on Nine Mile and Canyon Creeks just outside the Bunker Hill Superfund site. 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. This work was accomplished at cleanup costs that were one-fourth to one-fifth of the cleanup costs on a per-cubic-yard of material removed basis compared to EPA’s Superfund costs.

I have visited these sites on three occasions and can personally testify to the outstanding remediation and reclamation on Canyon and Nine Mile Creeks, and the substantial improvement in water quality as a

result of these efforts. And, the work has been completed, unlike the work at Superfund sites which seems to never end.

Finally, at the risk of stating the obvious, the Superfund legal procedures to identify Potentially Responsible Parties (PRPs), to assign joint and several liability, and to recover costs are premised on the concept that the site in question has owners who can be identified and compelled to pay for the cleanup. None of these provisions are appropriate for AML sites, which by definition, no longer have an identifiable owner. Thus, the Superfund Program is not an ideal or even applicable template for most AML sites.

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.

## CONCLUSION

Industry wants to see abandoned mines cleaned up. After all, they are *our* dirty pictures, and an albatross hanging around our neck. Mining opponents use pictures of historic, unreclaimed abandoned mines to foment public opposition to new mine proposals. But it is time for this recrimination and finger pointing to stop and to start working together to solve this problem.

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. A federal hardrock AML fund using revenue generated from royalties on new claims combined with effective Good Samaritan legislation to encourage private-sector reclamation efforts offers the best opportunity to expedite safety hazard abatement, remediation and reclamation of hardrock AML sites, and create 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 constructive amendments to the Mining Law that will provide the certainty, financial and regulatory framework necessary to maintain a prosperous domestic mining industry that will be able to generate revenues from a royalty on new claims to provide an additional funding source to augment existing state, federal and industry AML remediation and reclamation efforts. Good Samaritan legislation is essential if we truly want to address the historic AML problem.

I thank you for this opportunity to testify on this important issue and will be happy to answer any questions.