CWAG
CONFERENCE OF WESTERN ATTORNEYS GENERAL

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September 19, 2022

The Honorable Tom Carper
Chairman, Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Shelley Moore Capito
456 Dirksen Senate Office Building
Washington, D.C. 20510

RE: S.3571 - *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022*

Dear Chairman Carper and Ranking Member Capito:

The Conference of Western Attorneys General ("CWAG") request your support for Senate Bill 3571 titled the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022,* introduced by New Mexico Senator Martin Heinrich in February 2022 (the "Bill"). Tens of thousands of abandoned mines pollute an estimated 40% of headwaters in the Western United States. The current, existing legal framework deters would-be "Good Samaritan" entities, i.e., those who are not responsible for the pollution but want to help remediate it, from conducting voluntary cleanups at these abandoned mine sites. This stand-alone Bill effectively eliminates legal barriers and incentivizes Good Samaritan cleanups through a new permitting program administered by the U.S. Environmental Protection Agency ("EPA") and federal land management agencies.

The greatest legal barrier to Good Samaritans stems from the federal Clean Water Act, 33 U.S.C.A § 1251, *et seq.* ("CWA"). Section 402 of the CWA applies stringent regulatory standards through a prescriptive permitting process for any cleanup project seeking to improve water quality of discharges from a discrete source such

as a mine portal. Good Samaritan projects have limited budgets and lack the resources needed to meet these requirements. Even good faith attempts to improve water quality that do not meet these stringent "point source" discharge standards can lead to substantial liability for a Good Samaritan.

The Bill offers a practical solution aimed at achieving incremental water quality improvements through voluntary cleanups to complement limited federal and state resources. An entity must first qualify as a "Good Samaritan" by having no past or present ownership of the abandoned mine or any liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 *et seq.* ("CERCLA", a/k/a "superfund"). Eligible sites must have no identifiable owner or operator who is financially capable of carrying out the needed remediation.

Section 4 of the Bill establishes a pilot program authorizing EPA and federal land management agencies to collectively issue up to fifteen (15) Good Samaritan permits over a seven (7) year period. Unlike previous iterations, the Bill requires Good Samaritans to first document baseline conditions to help measure environmental quality improvements to affected media. Good Samaritans must also submit detailed remediation plans with sound engineering designs and adequate plans for operations, monitoring and maintenance. This Bill also ensures public involvement by deeming permit decisions "major federal actions" requiring preparation of Environmental Assessments under the National Environmental Policy Act, 42. U.S.C.A § 4321 *et seq.* ("NEPA"), subject to public review and comment.

Once issued, a Good Samaritan permit serves in lieu of a CWA discharge permit. Good Samaritans are exempt from CWA and CERCLA liability so long as they comply with the terms of their permit. Unlike past versions, the Bill safeguards against degradation by removing liability protections if the project results in measurable adverse impacts to water quality or other environmental conditions that cannot be returned to baseline.

Overall, the Bill strikes a balance between incentivizing voluntary cleanups and protecting against further environmental harm – something that has eluded previous lawmakers in the fourteen (14) Good Samaritan bills introduced since 1999. As testament to this accomplishment, the Bill has garnered broad support from state and local governments, sportsman groups, the mining industry, conservation organizations, and regional governmental associations, including the Western Governors' Association and Western States Water Council.

The Conference of Western Attorneys General urge you to vote in favor of the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2022* to help address the long-standing problem of abandoned mines impacting our natural environment.

Sincerely,

Karen White
Executive Director
Conference of Western Attorneys General