



GOOD SAMARITAN LEGISLATION ISN'T THE SOLUTION TO OUR HARDROCK MINE RECLAMATION PROBLEM

The August 5, 2015 spill of 3 million gallons of acid mine drainage into a tributary of Colorado's Animas River has left many legislators and communities searching for answersⁱ.

Good Samaritan legislation has been suggested as a solution to clean up the estimated 500,000 abandoned mines that plague the Westⁱⁱ. It is intended to encourage reclamation by granting Clean Water Act liability waivers to "Good Samaritans" – ideally state or local governments, or civic organizations – who would then clean up the pollution already draining from these hardrock mines.

Unfortunately, "Good Sam" doesn't address the fundamental obstacle to abandoned/inactive hardrock mine reclamation: funding the \$50 billion cleanup bill.

And if a "Good Sam" version passes that the mining industry favors, it would allow a private entity to create an Animas-type spill, and exempt the polluting party from responsibility for their mistake or from compensating damaged communities downstream.



Animas River before and after the mine waste spill

The Real Solution to Clean Up Old Mines: Money

According to the U.S. Environmental Protection Agency, 40% of the headwaters of western watersheds are polluted by miningⁱⁱⁱ, and cleaning up America's abandoned mines could cost more than \$50 billion^{iv}. Despite the Good Samaritan's virtue, all the charity available for this work cannot make a dent in a problem of this magnitude. Newer mines face similar funding shortages. According to the Government Accountability Office^v

Since 2005, GAO has reported several times that operators of hardrock mines on BLM lands have not provided financial assurances sufficient to cover estimated reclamation costs in the event that operators fail to perform the required reclamation.

Right now, that cost is borne by the taxpayer – in polluted water, public health risks and federal funds for clean up.

The only way to begin to address the pollution associated with old mine sites is to create a robust Hardrock Mine Reclamation Fund – similar to the fund that was created in the 1970s for the coal mining industry^{vi}. Charging a reclamation fee on hardrock mining will create a dedicated source of funding for clean up, and help us tackle the hundreds of thousands of mines that litter the West.



Good Samaritan Run Amok

Over the years, Congress has introduced a variety of different bills to facilitate Good Samaritan clean up of mines^{vii}. Some of those bills have promoted limited Clean Water Act liability waivers that intended to help a few, bona fide Good Samaritans complete individual projects. Such clean up projects, albeit important to local communities whose water is polluted with acid mine drainage, do not compare to the scale of the problem.

Other legislation has gone further afield, giving “Good” Samaritans blanket liability waivers from nearly all of our environmental laws, including the Safe Drinking Water Act and the Clean Air Act. These “Bad Samaritan” bills^{viii} also allowed mining companies to re-mine under the guise of clean up. Extracting metals from the ground for profit is mining, not reclamation, and should not be rewarded with liability waivers granting permission to pollute.

As we have seen with the Gold King Mine disaster in the Animas River^{ix}, much can go wrong when cleaning up highly polluted mine sites. It is important to closely monitor clean up to ensure that water quality improves and reclamation plans are followed. Adequate funding from a reclamation fee can ensure that funding is available to do the work right.

The Path Forward for Good Samaritans

The Environmental Protection Agency already has a process^x – called an Administrative Order on Consent (AOC) – that waives liability for Good Samaritans who can and will clean up old mines. Good Samaritans should use this existing process.

We know the AOC process works, since conservation groups have used it to clean up abandoned mines in Colorado.

With the AOC process in place, let’s not be distracted by the introduction of yet another round of Good Samaritan legislation. Many mines^{xi} in the west still leak an estimated **250-300 gallons** a day of acid mine waste into our watersheds.

Join us in calling for comprehensive reform legislation that will establish a large and dedicated source of funding through a hardrock mine reclamation fee. It’s time for hardrock mining to be held to the same standards as the coal industry.

ⁱ Al Jazeera America Opinion by Jennifer Krill: *The Colorado mine spill was predictable and preventable*, August 15, 2015. See <http://america.aljazeera.com/opinions/2015/8/the-colorado-mine-spill-was-predictable-and-preventable.html>

ⁱⁱ Earthworks/Mineral Policy Center, *Burden of Gilt: The legacy of environmental damage from abandoned mines, and what America should do about it*, (1993). See https://www.earthworksaction.org/library/detail/burden_of_gilt

ⁱⁱⁱ EPA *Liquid Assets 2000: Americans Pay for Dirty Water* at <http://water.epa.gov/lawsregs/lawsguidance/cwa/economics/liquidassets/dirtywater.cfm>

^{iv} EPA, Office of Solid Waste And Emergency Response, *Cleaning Up the Nation’s Waste Sites: Markets and Technology Trends* (2004), pages 1-11 and 1-12. See <http://nepis.epa.gov/Exe/ZyPDF.cgi/30006113.PDF?Dockey=30006113.PDF>

^v GAO, *Information on the Number of Hardrock Mines, Cost of Cleanup, and Value of Financial Assurances*, Jul 14, 2011. See <http://www.gao.gov/products/GAO-11-834T>

^{vi} See 30 U.S.C. 25 Subchapter IV §1231 et seq.

^{vii} S. 1848, the Cleanup of Inactive and Abandoned Mines Act, and S. 2780, the Good Samaritan Clean Watersheds Act. S. 1848, (109th Congress), S.1777 - The Good Samaritan Cleanup of Abandoned Hardrock Mines Act of 2009 (111th Congress)

^{viii} See Earthworks Policy Director Lauren Pagel June 14, 2006 testimony before the Senate Environment and Public Works at https://www.earthworksaction.org/files/publications/20060615_EARTHWORKS_GoodSam_testimony.pdf

^{ix} CNN Opinion by Lauren Pagel: *The real culprit in the Animas River spill*, August 12, 2015. See <http://www.cnn.com/2015/08/12/opinions/pagel-animas-river-pollution/index.html>

^x EPA memorandum - Clean Water Act Section 402 NPDES Permit Requirements for 'Good Samaritans' at Orphan Mine Sites. See https://www.earthworksaction.org/media/detail/new_epa_clean_water_act_policy_aids_abandoned_mine_cleanup#.Vgwma7RVikg

^{xi} Brian Clark Howard, National Geographic Magazine: *5 Other Mines at Risk of Spilling Toxic Waste*, August 14, 2015. See <http://news.nationalgeographic.com/2015/08/150814-hardrock-mines-toxic-waste-pollution-colorado-mine-environment-gold-king-spill>

