

Review of the U.S Federal Abandoned  
Hardrock Mines Reclamation Act of 2002  
and Related Initiatives

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**Abandoned Hardrock Mines in  
the United States**

the problem  
the barriers, and  
one possible solution

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## **Mineral Policy Center**

- Environmental advocacy nonprofit
- Dedicated to protecting communities and the environment from the impacts of (mostly metal) mining

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## **Abandoned Hardrock Mines in the U.S.**

- Cause of the problem
- Size of the problem
- Current remedies
- Barriers to solving the problem
- One possible solution – the Udall bill
- Prospects for the future

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## **The Cause of the Problem: the 1872 Mining Law**

### **Two purposes:**

1. Clarify mining rights so as to stop miners from killing one another
2. Settle the West by allowing purchase of mineral bearing public lands for \$5/acre.

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## **The Cause: the 1872 Mining Law (2)**

### **A product of its time:**

- No mention of environmental protection
- No provisions for mine reclamation

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## **The Cause: the 1872 Mining Law (3)**

- 131 years later, still the law
- NO federal environmental mining regulation until 1980
- “New” rules still weak

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## **The Size of the Problem: expansive**

- 500,000+ abandoned mines nationwide
  - More than half in the West (hardrock mines)
- 40% of western U.S. watersheds polluted by mining
  - Mostly historical/abandoned mines

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## **The Size of the Problem: expensive**

- \$32 - \$72 billion to clean up, if not more
- \$1 billion per site for historic and current mines not aberrations
- Still making more

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## **Currently Available Remedies: not much**

- No federal program dedicated to abandoned hardrock mine reclamation
- What exists: a grab bag

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## **Barriers to Solving the Problem: why not already solved?**

- Everyone agrees it's a problem, but...
- Legal/Liability barrier
- Financial barrier
- Political barrier

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## **Reclamation Barriers: liability**

- Penn Mine case established liability fear for Good Samaritans
- You touch it, you're liable under the Clean Water Act

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## **Reclamation Barriers: financial**

- No dedicated funding for abandoned hardrock mine cleanup
- Mine cleanup is expensive
  - millions to almost \$1 billion per polluting site

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## **Reclamation Barriers: political/financial**

- Industry opposed to fee levied on current mining to address historical problems
- Enviros opposed to using taxpayer funds to address industry caused problem

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## **Reclamation Barriers: political/liability**

- Some enviros opposed to weakening Clean Water Act to address liability
- Liability Trojan Horse/slippery slope fears

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## **A Potential Solution: Udall Abandoned Mine Bill**

- Financial: establishes a fee on most hardrock mining
- Legal: provides liability waiver for most gov't Good Samaritans

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## **Udall – Financial: reclamation fee**

- Per mine fee on minerals acquired under 1872 Mining Law
- Sliding scale net proceeds: 2-5%
- Based upon industry-endorsed NV tax
- Would generate \$45 million/yr

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## **Udall – Financial: reclamation fee distribution**

- 50% based upon value of historical production
- 25% based upon value of current production
- 25% at discretion of federal gov't

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## **Udall – Liability: Good Sam waiver eligibility**

- Provides Good Samaritan liability waiver to gov't entities
- Gov't can contract with industry to perform reclamation

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## **Udall – Liability: remining**

- Remining not explicitly prohibited, but...
- Remining revenues must go to cleanup
- No waiver where minerals can be economically extracted

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## **Udall – Liability: waiver conditions**

- Waiver holds only if reclamation permit followed
- Waiver does not cover worsening of preexisting pollution

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## **Prospects for the Udall bill**

- Industry trying to suborn the fee
- Enviros not entirely on board with the liability waiver
- But... unprecedented, consistent, prolonged interest by all stakeholders

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## **Grounds for Agreement**

- All stakeholders know abandoned mine reclamation is a huge problem
- Most stakeholders know that addressing the problem requires:
  - Dedicated funding
  - Liability relief