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ABANDONED MINES IN THE UNITED STATES AND OPPORTUNITIES FOR GOOD SAMARITAN CLEANUPS

(114–29)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

October 16, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on "Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups"

PURPOSE

On Wednesday, October 21, 2015, at 10:00 a.m. in 2167 Rayburn House Office Building, the Subcommittee on Water Resources and Environment will meet to receive testimony on "Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups." Witnesses will include representatives of the Environmental Protection Agency (EPA), the Western Governors Association (WGA), the Interstate Mining Compact Commission (IMCC), the National Mining Association (NMA), Trout Unlimited, and Earthworks.

BACKGROUND

On August 5, 2015, the Environmental Protection Agency (EPA) along with its contractor, Environmental Restoration, LLC, and representatives of the Colorado Division of Reclamation Mining and Safety were conducting an investigation of the Gold King Mine in the vicinity of Silverton, Colorado. The intent of the investigation was to assess on-going mine drainage water releases from the mine in order to treat the mine water, and assess the feasibility of further mine remediation. This investigation was part of a larger effort within the Upper Animas Mining District to determine, along with the state, whether listing of the Gold King Mine on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) National Priorities List (NPL) was warranted for further remedial action. The plan was to excavate unconsolidated material that had collapsed into the mine entry back to the timbering. During the excavation, the unconsolidated material gave way, opening the mine tunnel and spilling the water accumulated behind the collapsed material into Cement Creek, a tributary of the Animas River.

Estimates are that the release consisted of approximately three million gallons of water that had been held behind the unconsolidated material in the abandoned mine entry. There were several workers at the site at the time of the breach, all of whom were unharmed.

The contaminated plume of water stretched for miles, flowing downstream from Cement Creek into the Animas and San Juan Rivers, a course that stretches from Colorado into New Mexico and eventually into Utah and Arizona. The rivers also flow along lands of the Southern Ute Tribe and through the Navajo Nation.

The spill released heavy metals, including arsenic, copper, lead, mercury, and selenium, into the water, affecting water quality and contaminating river sediments. The effects of the spill, particularly the long term effects, continue to be monitored, but are not yet clear. The incident has brought renewed attention to the challenges posed by the Nation's multitude of abandoned mines.

Past mining activities have impacted hundreds of thousands of acres of land, altered surface and ground water drainage patterns, and generated substantial amounts of waste, much of which was left in waste piles scattered around the landscape. Waste includes tailings, dump/heap leaching wastes, and mine water. Most of these old sites were mined, and later abandoned by the mine owners or operators when it was no longer economically viable to retrieve minerals from the sites, prior to the environmental laws enacted in the 1970s.

Today, it is estimated that over half--a--million abandoned hard rock and coal mine sites are scattered throughout the United States, on private, state, or federal lands. Though not all abandoned mines are a threat, some of these abandoned mines, plus their associated residual waste, adversely impact the quality of surface and ground waters and pose other environmental and health hazards as a result of acid mine drainage and toxic loadings of heavy metals leaching into water sources. Many of these old mine sites also pose physical safety hazards. An estimated 15,000 abandoned hard rock mine sites present the most significant potential threat to surface and ground waters. Currently, there are few efforts underway around the nation to clean up abandoned mine sites, other than those sites that are directly being addressed under the EPA's Superfund program.

The potential costs to the environment and to society of these abandoned mines are great. Tens of thousands of miles of streams around the nation are contaminated by acid and metals from drainage from these abandoned mine sites, and hundreds of thousands of acres of lakes and reservoirs are impacted by runoff from abandoned mines. As a result, substantial amounts of aquatic habitat can be disturbed, spoiling these many streams, lakes, and reservoirs for fishing, hiking, and other recreational activities, and impacting aquatic species in those habitats. All of this results in the possibility of substantial loss of revenue for communities whose economies depend on outdoor activities.

Discharges of acid and heavy metals from mine sites have polluted water supplies, affecting residential, commercial, and industrial usage. Numerous communities and industries must spend hundreds of thousands of dollars to treat their surface or ground water supplies tainted by polluted runoff from abandoned mines.

BARRIERS TO ADDRESSING THE ABANDONED MINES PROBLEM

While it is widely acknowledged that the many abandoned mine sites around the Nation are a problem and that securing and cleaning up priority sites is warranted--particularly those sites that may be contributing to water quality problems or that present public health and safety concerns--it is less clear how to go about doing it. Several issues must be addressed at most abandoned mine sites.

Identifying Who Is Responsible

The first issue is responsibility. Most of the mine operations involved with abandoned mines ceased decades ago, prior to modern environmental concerns and standards. As a result, it is often difficult to identify a party responsible for a cleanup as many businesses may have gone bankrupt, merged with other companies, or simply vanished. In many instances, many abandoned mine sites on government-owned lands are so old that no financially viable parties who can be readily associated with abandoned mine sites exist today, and many of the abandoned mine sites are so old that the government property owner is the only remaining viable party.

Financial Issues

A second issue regarding the remediation of abandoned mines involves having sufficient resources available to address the multitude of sites. The leading federal program to address the environmental and human health challenges associated with abandoned mines is the Superfund program. While the Superfund statute aims to compel responsible parties to pay the cost of cleanup when such parties can be found and are financially viable, the Superfund program also has a "Fund-lead" program where the cost of cleanup is funded by appropriations from the U.S. Treasury.

Superfund cleanup generally can take two forms—the Superfund removal program, which covers short-term actions to address imminent threats to human health and the environment, and the Superfund remedial program, which addresses typically longer-term efforts to clean up contaminated sites that are listed on the NPL. Federal efforts to address abandoned mine sites under Superfund can be carried out under both programs. However, because the Superfund program focuses on more than just abandoned mine sites, funding for the cleanup of abandoned mine sites must compete against efforts to remediate other toxic sites across the Nation. In FY 2015, EPA's Superfund cleanup programs received $682 million.

The Surface Mining Control and Reclamation Act (SMCRA) of 1977 created an abandoned mine land (AML) fund to pay for the cleanup of abandoned coal mine sites. Certain authorized states can use a portion of their SMCRA AML funds to pay for abandoned hardrock mines when all of the state's coal-related sites have been addressed. On average, about $3.5 million in AML funds are available nationwide each year for abandoned hardrock mines.

Legal Obstacles

Legal requirements may present impediments to successfully addressing abandoned mine sites. There are potentially many voluntary parties, who did not own or operate the abandoned mines or have anything to do with causing pollution problems, willing to take steps to reduce the environmental, health, and safety problems associated with abandoned mine sites. These parties, sometimes referred to as "Good Samaritans," may include government agencies, nongovernmental organizations, mining companies, or other private parties.

These parties may be interested in being a Good Samaritan simply for the sake of helping to clean up the environment. Some parties may also have other important motivations. For example, some may wish to eliminate a pollutant source so that they can re-establish suitable fishery habitat to improve fishing in currently-impacted waters. Others may want to reduce the pollutant loadings to their impacted surface or ground water supplies to minimize their water treatment costs. Still other parties, for example, some mining companies, may wish to enter lands to clean up and reclaim a shut down or abandoned mine site for purposes of re-mining. In some cases, those parties interested in doing site remediation only want to achieve a level of environmental improvement compatible with their objectives and not necessarily in meeting all water quality or cleanup standards.

However, potential Good Samaritans have indicated a reluctance to become involved in site cleanup work at abandoned mines because of liability concerns under various environmental laws. For example, potential legal liability exists under the Clean Water Act (CWA), or comparable state law, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund).

Under the Clean Water Act, anyone conducting cleanup activities at an abandoned mine site could become responsible for any new or continuing point source discharges of pollutants from the mine, and must obtain an NPDES (National Pollutant Discharge Elimination System) permit for such discharges from the site. Not only would that party be responsible for conducting the cleanup activities, but they could remain responsible for any point source discharges that continue after the cleanup activities are completed.

In addition, when a party receives an NPDES permit, that permit requires the party to meet all applicable technology-based standards, and may include more stringent water quality standards. A Good Samaritan may want to decrease the discharge of pollutants and acid mine drainage but, perhaps because of cost limitations, cannot undertake a comprehensive remediation project that would satisfy all Clean Water Act standards.

The liability scheme under the Superfund law could also be a deterrent to the cleanup of abandoned mine sites. Liability under Superfund is strict (that is, the potentially responsible party (PRP) need not have been negligent), joint and several (that is, any one PRP can be sued for the entire damage), and retroactive (that is, a current party can be sued for any damages caused by past disposal of hazardous substances, even if done by others). As a result, a Good Samaritan who did not cause the contamination problem in the first place, yet gets involved with cleaning up an abandoned mine site, could become liable for cleanup costs far greater than they

are willing to pay. However, Superfund provides liability protection where a release is pursuant to a Clean Water Act permit. This permit shield is effective as long as the release complies with the permit.

Over the past few years, the EPA has issued guidance in an attempt to address concerns over potential liability for parties desiring to conduct Good Samaritan cleanup projects at abandoned mine sites.

In 2007, EPA issued its "Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans." The stated purpose of this guidance document was to "provide greater legal certainty to Good Samaritans and resolve to the extent possible the threat of potential federal liabilities so that voluntary cleanups at these sites can proceed." The guidance created two tools aimed at addressing potential Good Samaritan liability concerns: (1) the model "Good Samaritan Comfort Letter," where EPA would pledge not to litigate, and defend the Good Samaritan against third party lawsuits, for agreed-upon cleanup efforts; and (2) a model "Good Samaritan Settlement Agreement and Order," which is a more formal covenant not-to-sue/settlement agreement for cleanup work by the Good Samaritan. This guidance was reaffirmed by the current administration in 2015.

In 2012, EPA issued a second guidance document entitled, "Clean Water Act § 402 National Pollutant Discharge Elimination System (NPDES) Permit Requirements for "Good Samaritans" at Orphan Sites." This guidance document clarified a Good Samaritan's obligations under the Clean Water Act while undertaking cleanup actions at an abandoned mine site. The guidance, among other things, states that "a Good Samaritan would be exempt for [Clean Water Act] permitting requirements for any discharge, including any periodic monitoring that occurs under the CERCLA [tools outlined in the 2007 guidance]." The guidance continues that, after the cleanup work is complete, the Good Samaritan "would also generally not be the entity responsible for obtaining an NPDES permit even where a discharge continues from a passive treatment system."

However, the 2012 guidance does conclude that "[although EPA expects] this memorandum to provide clarification regarding permit obligations for Good Samaritans, we recognize that it does not address or resolve all potential liability associated with discharges from abandoned mines."

Despite EPA's issuance of Good Samaritan guidance, few parties to date have been willing to proceed ahead with Good Samaritan cleanup projects at abandoned mine sites.

MODIFICATION OF LEGAL STANDARDS

The Subcommittee will examine through this hearing the impacts of abandoned mines in the United States and whether some modification of the current legal standards for cleanup is in the public interest when responsible parties cannot be found and Good Samaritans are willing to do a partial or complete cleanup of such sites. Such action may encourage more parties to step forward and become Good Samaritans.

Several hearing witnesses support creating incentives for remediation of abandoned mines to improve water quality. However, issues remain that must be resolved. These include: who should be allowed to remediate with liability protections; whether, and to what extent, anyone should try to find the original polluter; whether and how to apply cleanup benchmarks or standards; whether citizen suits should be allowed against a party acting as a Good Samaritan; and whether to extend Good Samaritan protections to abandoned coal as well as hard rock mines, and to public as well as private lands.

WITNESS LIST

PANEL I

The Honorable Mathy Stanislaus
Assistant Administrator for the Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Washington, D.C.

PANEL II

Eric Cavazza, Director
Bureau of Abandoned Mine Reclamation
Pennsylvania Department of Environmental Protection
On Behalf of the Interstate Mining Compact Commission
and the National Association of Abandoned Mine Land Programs

Luke Russell, Vice President External Affairs
Hecla Mining Company
On Behalf of the National Mining Association

Doug Young, Senior Policy Director
Keystone Policy Center

Chris Wood, President
Trout Unlimited

Lauren Pagel, Policy Director
Earthworks

ABANDONED MINES IN THE UNITED STATES AND OPPORTUNITIES FOR GOOD SAMARITAN CLEANUPS

WEDNESDAY, OCTOBER 21, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m. in room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. The Subcommittee on Water Resources and Environment, a subcommittee of the Committee on Transportation and Infrastructure, will come to order. A couple pieces of housekeeping.

First, I ask unanimous consent that the hearing record be kept open for 30 days after this hearing in order to accept written testimony for the hearing record. If there is any objection?

[No response.]

Mr. GIBBS. Without objection, so ordered.

I will also ask unanimous consent that written testimony submitted on behalf of the following parties be included in this hearing's record: James Ogsbury, the executive director of the Western Governors' Association; and John Dawes, the executive director of the Foundation for Pennsylvania Watersheds.

[No response.]

Mr. GIBBS. Without objection, so ordered.

I would like to welcome everybody. We are going to have two panels, and our hearing today is about abandoned mines and the opportunities for Good Samaritan cleanups.

Past mining activities, far removed from the sophisticated mining practices we see today, disturbed hundreds of thousands of acres of land, altered drainage patterns, and generated substantial amounts of waste scattered around the Nation. Today it is estimated there are as many as 500,000 of these old abandoned mine sites in the United States. Many of these mines were abandoned by the owners or operators a long time ago, once the remaining minerals became too difficult or costly to extract.

Although operated consistent with the laws at the time, many—but not all—of these abandoned mines now pose environmental and health threats to surrounding surface and groundwaters, nearby lands, and downstream communities. It is estimated that tens of thousands of miles of streams across the Nation are polluted by

acid mine drainage and toxic loading of heavy metals leaching from many of these old mines, impacting fisheries and water supplies.

State and Federal agencies have worked to remedy these problems, as have local governments and nongovernmental organizations, but the number of these sites and the expense involved has made progress very slow. Some of these old mines lack a viable owner or operator with the resources to remediate them. Many others are truly abandoned, with no identifiable owner or operator to hold responsible. As a result, few of these old mine sites are getting cleaned up.

Public or private volunteers, otherwise known as Good Samaritans, are willing to carry out a partial or complete remediation at some of these sites. These Good Samaritans may be driven by a desire to improve the environment. Others may want to improve water quality at their water supply source. Still others may want to clean up an old mine site for the purpose of remining the area.

However, most Good Samaritans have been deterred from carrying out these projects by the risk of becoming liable for complete cleanup required by various environmental laws. This is because Federal laws do not always allow for partial cleanups. For example, if a Good Samaritan steps in to partially clean up an abandoned mine site, the party could become liable under the Clean Water Act or Superfund for a greater level of cleanup and higher costs than the party initially volunteered for.

In the end, most potential Good Samaritans refrain from attempting to address a site's pollution problems at all because they could face the legal consequences if they fall short of complete cleanup.

While Superfund and the Clean Water Act have been successful in reducing pollution from commercial and industrial locations, these laws have also had the unforeseen consequence of deterring cleanup at the abandoned mine sites. In other words, laws that were designed to protect the environment may now be inadvertently harming or discouraging the cleanup of the environment. Our laws should encourage, rather than discourage, parties to volunteer themselves to clean up abandoned mine sites.

We should consider whether, in some circumstances, environmental standards should be made more flexible in order to achieve at least a partial cleanup of these sites that otherwise would remain polluted. This is not about letting polluters off the hook. Those who pollute will remain legally responsible for the pollution they caused.

I believe there is little disagreement that encouraging volunteers to clean up abandoned mine sites is a worthwhile policy, since some improvement is better than no improvement. However, in exploring the details of such a policy, a number of issues arise, such as who should be eligible, how should new standards be applied, and how should potential remining of these sites be addressed.

To help us identify and address these and other issues, we have a panel of witnesses that have been actively involved in the debate over how to address the abandoned mines problem in this country. I hope our witnesses will bring forward ideas on how we can remove the impediments to abandoned mine cleanups and get more Good Samaritans to step forward.

At this time I recognize Ranking Member Napolitano from California.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And thank you to the panelists and the people who are here to listen to this very important issue.

There are numerous lessons that have been learned from the event that occurred in southwest Colorado. First and foremost is that, even in the absence of dramatic spills like that one at the Gold King Mine, abandoned mines across the United States have a significant negative impact on regional water quality and are a major source of water pollution to America's waters.

As an example, prior to the spill in Colorado, Gold King Mine discharged pollutant-laden water at the rate of 200 gallons per minute. Moreover, mines in the Animas River watershed have been polluting the Animas River at the rate of approximately 330 million gallons of acid mine drainage a year. These ongoing discharges disastrously affect plant and animal life in the Upper Animas Basin. So much so that the basin's river and streams were almost entirely—almost devoid of fish, even before the spill. This is a problem too big to ignore, not only here in the gold mine area, but also in other parts of the country.

Most importantly, the spill reminded us of the scope of the problem that isn't unique to the Animas watershed. Abandoned mines are currently polluting rivers and streams across the country. By current estimates, approximately 500,000 abandoned hardrock mines are located throughout the United States. Sadly, the exact number and location of abandoned mine sites throughout the country is unknown.

Let me repeat that: We do not know how many of these mines exist, or where they are. And I am asking that possibly we ask NACo [National Association of Counties], the BLM [Bureau of Land Management], and the Forest Service to do an assessment—and especially the Conference of Mayors and the National Governors Association—to be able to report to us when, where, and how they are, so we can begin to at least understand where are the priorities that we may face in the future for some of these spills. It is a real disaster.

And also, one of the factors we sometimes leave out is the American tribes and their lands, who are particularly vulnerable to this pollution. According to the United States Geological Survey, more than 40 percent of the watersheds in or west of the Rocky Mountains have streams in which impacts of mining represent a potential threat to human or ecosystem health. These mines and mines across the country carry a variety of pollutants, including zinc, cadmium, silver, copper, lead, and arsenic. When these mines inevitably leak, these heavy metals and pollutants travel into the nearby rivers and streams with disastrous water quality consequences.

Furthermore, the cost of cleaning up the sites is enormous. Nongovernmental organizations, such as Earthworks, have estimated that it would cost anywhere from $32 billion to $72 billion to reclaim abandoned hardrock mines located throughout the U.S. The size and scope of the problem posed by these mines, these abandoned mines, and the resources necessary to address it call for action.

H.R. 963, the Hardrock Mining Reform and Reclamation Act of 2015, introduced by my boss on the left, Ranking Member DeFazio, and the ranking member of the Committee on Natural Resources, Representative Raúl Grijalva, is a step towards the right direction. I cosponsored the legislation because it recognizes that Good Samaritan legislation alone will not solve the problem. Without a dedicated fund to address abandoned hardrock mine sites, these mines will continue to pollute America's rivers and streams.

Mr. Chairman, I thank you and look forward to the witnesses. Yield back.

Mr. GIBBS. At this time, since the ranking member of the committee, the full Committee on Transportation and Infrastructure, Mr. DeFazio, is here, I open the floor for any remarks he would like to make.

Mr. DEFAZIO. Thank you, Mr. Chairman. Mr. Chairman, I wish I could stay for the entire hearing and pose some questions. I have worked on this issue for many years. I have an abandoned mine in my district, Formosa Mine, which I have visited, which is producing 10 million gallons a year of acid drainage, and it has destroyed prime salmon habitat and has caused other downstream problems. It is yet another foreign bankrupt company with inadequate bonding. And, you know, the EPA [U.S. Environmental Protection Agency] is looking at a cleanup. But again, we are depending upon the taxpayers.

I think Good Samaritans can play a role. And, in fact, in the comprehensive mining reform bill which I filed as ranking member on the Committee on Natural Resources, I did include provisions for Good Samaritans to incorporate them. But the problem is much bigger than Good Samaritans could ever accomplish. As Mrs. Napolitano noted, we don't really even have, you know, a good listing of what the magnitude of the problem is. Many tens of billions of dollars for cleanup.

So, we need a source of funds. Otherwise, you know, these cleanups aren't going to happen. And my comprehensive bill would—although it is not the jurisdiction of this committee, it would establish a royalty on hardrock mining which will be dedicated to cleanup.

Now, everybody else in the world charges royalties. States charge royalties, Native American tribes charge royalties, private landowners charge royalties, foreign governments charge royalties. Only the United States of America, where we are going to run the Government like a business, do we not charge royalties. Oh, but those companies pay taxes. Yeah.

You know, it is time to get real about the magnitude of this problem. And that would be one way to approach it—would be to have the royalty applied to dealing with it—and it would still take many, many, many years to do these cleanups.

Secondly, I would give authority—again, under this bill, not under the jurisdiction of this committee—to Federal agencies to set aside particularly sensitive areas which, right now, under the 1872 mining law, they can't do.

So that, and then, as I mentioned earlier, I have the Good Samaritan provisions. So I am very supportive of doing what we can

to encourage Good Samaritan work, but the magnitude of the problem far exceeds what they are going to do.

I understand also that the industry is going to propose remining dealing with tailings and that, and that can be appropriate in some instances. But some obligation should also come along with that activity, you know, and that would be something to be further discussed, if that were to be included in legislation.

So, I really appreciate the chairman's attention to this issue. It is, as he knows, a really big deal in the Western United States. And I am sure there are sites affected in the East, too. But in the West it is a really big deal. So thank you for holding this hearing.

Mr. GIBBS. Thank you. Our first panel, we have the Honorable Mathy Stanislaus. He is the Assistant Administrator for the Office of Solid Waste and Emergency Response at the U.S. EPA here in Washington. Welcome, Mr. Stanislaus, and the floor is yours.

TESTIMONY OF HON. MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. STANISLAUS. Thank you, Chairman Gibbs, Ranking Member Napolitano and DeFazio. I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response.

Former and abandoned mine sites can pose public safety and environmental hazards. These sites are located primarily in the Western States, but not limited to the Western States. They are among the largest sources of pollution degrading water quality in the United States. Acid mine drainage from these mines has polluted thousands of miles of streams and rivers as well as groundwater, posing risk to human health, wildlife, and the environment.

This polluted drainage can also affect local communities and local economies by threatening drinking water and agricultural water supplies, and limiting recreational use of water resources.

EPA addresses a small subset of these sites. We currently have about 137 sites that we are currently addressing from a long-term cleanup perspective through the Superfund cleanup program. The abandoned mine sites being addressed through EPA's Superfund program again represent a small fraction of the estimated number of former abandoned mines found throughout the country.

From fiscal years 2010 through fiscal year 2014 EPA has expended $1 billion for cleanup at these sites. Of this amount, close to $600 million has come from taxpayer resources through the appropriations process, as well as about $470 million coming from responsible parties.

Although the estimates vary, there are likely hundreds of thousands of former abandoned hardrock mines through the United States. In 2011 the U.S. Government Accountability Office testimony reported there were at least 161,000 abandoned hardrock mine sites in the 12 Western States and Alaska, and at least 33,000 of these sites had degraded the environment by contaminating surface water, groundwater, or leaving arsenic-contaminated tailings piles. In Colorado alone the State has identified approximately 23,000 former mines.

Former and abandoned mine lands exist across private, mixed, Federal, and State lands. This mixture of land ownership adds to

the complexity of this issue. Federal programs that address former and abandoned mines are spread among a variety of Federal agencies with no one agency having overall statutory responsibility. Principally, five Federal agencies, including EPA, provide Federal funding for the cleanup of some of these hardrock mining sites.

As to abandoned hardrock mining sites and Good Samaritan issues, over the years EPA has heard from stakeholders about liability concerns, principally under the Clean Water Act and the Superfund, or the Comprehensive Environmental Response, Compensation, and Liability Act, that could deter voluntary efforts. To address these concerns, in 2007 EPA issued an administrative tool to provide strong protections for Good Samaritans regarding potential Superfund liability.

The Agency's interim guidance and the model Good Samaritan Agreement and comfort/status letter can be used to provide greater legal certainty for volunteers to move forward to provide adequate measures to the Agency that a cleanup will be performed properly. These tools were intended to address the cleanup of relatively small projects by Good Samaritans at orphan mine sites to accelerate partial or complete cleanup of, again, relatively small projects to result in very good environmental improvements.

Further, in 2012, EPA issued a memo to provide clarification that, in general, Good Samaritans would not be the entity responsible under the Clean Water Act to obtain a discharge permit after the completion of the cleanup work under a CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act] cleanup plan developed pursuant to an administrative settlement agreement. Thus, these administrative tools address many of the Good Samaritan issues raised to EPA by stakeholders over the years.

In closing, there are, again, hundreds of thousands of former and abandoned hardrock mine sites located throughout the country, posing environmental hazards, and among the largest sources of pollution degrading water quality, particularly in the Western United States. The scope of the problem cannot be addressed solely by current Federal or State cleanup programs. Much more must be done to address the risk posed by former and abandoned hardrock mines. Encouraging Good Samaritan cleanups is just one of the many tools needed to address the complex and costly problems posed by polluting former and abandoned hardrock mines.

Other tools, including additional resources for cleanup of these sites within the EPA's jurisdiction and financial assurance by mining companies to make sure that adequate financial resources are there when a mining site gets abandoned, could be addressed.

With that, Mr. Chairman, I look forward to your questions.

Mr. GIBBS. Thank you, and I will start off some questions.

You are talking about the EPA's administrative tools. I guess my first question is how effectively they have worked. I think the last one was put out in 2012. And it is my understanding is that, under the Good Samaritan kind of program through these administrative tools, there has only been—only one mine has been taken up, is that correct—since 2012 under Good Samaritan, only one mine?

Mr. STANISLAUS. I believe that is correct, one mine has been addressed. And there have been a number of other mines that various entities have approached EPA.

Mr. GIBBS. So would you concur that the changes that EPA made in 2012 are taking effect, are working, or have they had a negligible effect?

Mr. STANISLAUS. Well, what we believe is that it addresses the issues of liability on a Superfund for being a responsible party, as well as responsibility for the discharged post the cleanup. And those are the big issues that have been raised——

Mr. GIBBS. Well, then how come there aren't more Good Samaritans? I know on our second panel coming up, when we are through with this panel, in their testimony they are saying that there are lots of Good Samaritans out there, including a couple of people that are representing entities that are going to testify in the next panel. They say that they have had to back away because the tools aren't there giving liability protection—not the conflict in the law, you know, because you just said in the 2012 administrative rule you wouldn't have to get NPDES [National Pollutant Discharge Elimination System] permits under section 402. But apparently, it is not working if there has only been one taker.

Mr. STANISLAUS. Yes. I really don't have any information as to what are the factors regarding whether there are a large number of Good Samaritans, and what are the factors they have decided to pursue or not pursue.

What we believe we have done is we have addressed the liability concerns from the Superfund and Clean Water Act perspective, and we are open to further refinement.

Mr. GIBBS. OK. Back in 2006 the EPA proposed legislation that would provide liability protections for Good Samaritans. Does EPA still support that proposal? If not, why not?

Mr. STANISLAUS. Well, you know, since that time we have, in fact, clarified the liability on Superfund and on the Clean Water Act. So I believe that we have addressed the concerns.

Again, we continue to want to—if the chairman——

Mr. GIBBS. I think it still goes back to the fact that we just don't have entities taking up the initiative to go and work on these cleanups, and that is evidenced by the testimony in our next panel. So I guess my message to you, as the EPA Assistant Administrator on this, is that those administrative tools, even though they were well intentioned, are not working, because we still have this issue of all these abandoned mines.

Now, do you concur that there are over half-a-million abandoned mines in this country?

Mr. STANISLAUS. Yes. Actually, the only specific number I have in front of me is the GAO [Government Accountability Office] study. Your number of 500,000 is probably in the ballpark, so—yes.

Mr. GIBBS. I am curious how many mines is the EPA investigating right now?

Mr. STANISLAUS. Well, investigating, I don't have the—we have 137 where EPA is involved in long-term cleanup.

Mr. GIBBS. Are these primarily hardrock mines, or are they gold—what kind of mines are they?

Mr. STANISLAUS. I believe the 137 are hardrock mines——

Mr. GIBBS. OK.

Mr. STANISLAUS. I can clarify that. In terms of other mines that we are investigating, I don't have that information in front of me, but I can get it to you.

[The information follows:]

Attached is a list of 139 mining related NPL sites in response to a request from Chairman Gibbs. Mr. Stanislaus referenced 137 sites, but this list now includes the recently NPL proposed sites Bonita Peak and Argonaut mines. The table provides information about mining and mineral processing sites proposed for, listed on, and deleted from the National Priorities List (NPL) as well as mining sites being cleaned up using the Superfund Alternative Approach (SAA). The table includes NPL status (i.e., proposed [P], final [F], deleted [D], or not on the NPL [N]). For those sites that have reached the construction complete stage, the date when they reached the CC status is provided.

Mining and Mineral Processing National Priorities List Sites as of April 21, 2016

Region	EPA Id	Site Name	NPL Status Code	Superfund Alternative Agreement Flag	CC Date
01	MED980524128	CALLAHAN MINING CORP	F	N	
01	VTD988366621	ELIZABETH MINE	F	N	
01	VTD988366571	ELY COPPER MINE	F	N	
01	VTD988366720	PIKE HILL COPPER MINE	F	N	
02	NJD980785646	GLEN RIDGE RADIUM SITE	D	N	9/15/2005
02	NYD986882660	LI TUNGSTEN CORP.	F	N	9/25/2008
02	NJD980529762	MAYWOOD CHEMICAL CO.	F	N	
02	NJD980785653	MONTCLAIR/WEST ORANGE RADIUM SITE	D	N	9/15/2005
02	NJD002365930	SHIELDALLOY CORP.	F	N	
02	NJD980654172	U.S. RADIUM CORP.	F	N	9/28/2006
02	NJ1891837980	W.R. GRACE & CO., INC./WAYNE INTERIM STORAGE SITE (USDOE)	D	N	9/16/2003
03	PAD000436436	AMBLER ASBESTOS PILES	D	N	8/30/1993
03	PAD987341716	AUSTIN AVENUE RADIATION SITE	D	N	9/27/1999
03	PAD077087989	FOOTE MINERAL CO.	F	N	10/28/2010
03	PASFN0305549	FRANKLIN SLAG PILE (MDC)	F	N	
03	PAD980829493	JACKS CREEK/SITKIN SMELTING & REFINING, INC.	F	N	12/23/2004
03	PAD002395887	PALMERTON ZINC PILE	F	N	
03	VAD980705404	U.S. TITANIUM	F	N	8/25/1997
04	SCN000407714	BARITE HILL/NEVADA GOLDFIELDS	F	N	
04	SCD987577913	BREWER GOLD MINE	F	N	

Mining and Mineral Processing National Priorities List Sites as of April 21, 2016—Continued

Region	EPA Id	Site Name	NPL Status Code	Superfund Alternative Agreement Flag	CC Date
04	TND987768546	CHEMET CO.	D	N	5/15/1996
04	TN0001890839	COPPER BASIN MINING DISTRICT	N	Y	
04	SCN000407376	HENRY'S KNOB	S	Y	
04	SCD003360476	MACALLOY CORPORATION	F	N	9/26/2006
04	KYD049062375	NATIONAL SOUTHWIRE ALUMINUM CO.	D	N	9/24/2008
04	NCN000409895	ORE KNOB MINE	F	N	
04	FLD010596013	STAUFFER CHEMICAL CO. (TARPON SPRINGS)	F	N	
05	ILSFN0508010	ALCOA PROPERTIES	N	Y	
05	ILN000508170	ASARCO TAYLOR SPRINGS	F	N	
05	ILN000510407	BAUTSCH-GRAY MINE	F	N	
05	ILD050231976	CIRCLE SMELTING CORP.	P	N	
05	ILD062340641	DEPUE/NEW JERSEY ZINC/MOBIL CHEMICAL CORP.	F	N	
05	ILD980606941	EAGLE ZINC CO DIV T L DIAMOND	F	N	
05	ILN000508134	HEGELER ZINC	F	N	
05	IL0000064782	MATTHIESSEN AND HEGELER ZINC COMPANY	F	N	
05	IL0000034355	OLD AMERICAN ZINC PLANT	F	Y	
05	OHD004379970	ORMET CORP.	F	N	8/4/1998
05	ILD053980454	SANDOVAL ZINC COMPANY	F	N	
05	MID980901946	TORCH LAKE	F	N	9/23/2005
05	IND047030226	U.S. SMELTER AND LEAD REFINERY, INC.	F	N	
06	NMD002899094	CHEVRON QUESTA MINE	F	N	
06	NMD980749378	CIMARRON MINING CORP.	F	N	9/24/1992
06	NMD981155930	CLEVELAND MILL	D	N	9/23/1999
06	NMD007860935	HOMESTAKE MINING CO.	F	N	9/20/1996
06	NMN000607033	JACKPILE-PAGUATE URANIUM MINE	F	N	
06	OKD000829440	NATIONAL ZINC CORP.	P	N	
06	OKD980629844	TAR CREEK (OTTAWA COUNTY)	F	N	
06	TXD062113329	TEX-TIN CORP.	F	N	9/20/2004

Mining and Mineral Processing National Priorities List Sites as of April 21, 2016—Continued

Region	EPA Id	Site Name	NPL Status Code	Superfund Alternative Agreement Flag	CC Date
06	OKD987096195	TULSA FUEL AND MANUFACTURING	F	N	
06	NMD030443303	UNITED NUCLEAR CORP.	F	N	9/29/1998
07	MO0000958611	ANNAPOLIS LEAD MINE	F	N	9/25/2007
07	MOD981126899	BIG RIVER MINE TAILINGS/ST. JOE MINERALS CORP.	F	N	
07	KSD980741862	CHEROKEE COUNTY	F	N	
07	KSN000705026	FORMER UNITED ZINC & ASSOCIATED SMELTERS	F	N	
07	MOD098633415	MADISON COUNTY MINES	F	N	
07	MOD981507585	NEWTON COUNTY MINE TAILINGS	F	N	
07	NESFN0703481	OMAHA LEAD	F	N	
07	MOD980686281	ORONOGO-DUENWEG MINING BELT	F	N	
07	MON000705443	SOUTHWEST JEFFERSON COUNTY MINING	F	N	
07	MON000705842	WASHINGTON COUNTY LEAD DISTRICT - FURNACE CREEK	F	N	
07	MON000705027	WASHINGTON COUNTY LEAD DISTRICT - OLD MINES	F	N	
07	MON000705023	WASHINGTON COUNTY LEAD DISTRICT - POTOSI	F	N	
07	MON000705032	WASHINGTON COUNTY LEAD DISTRICT - RICHWOODS	F	N	
08	MTD093291599	ACM SMELTER AND REFINERY	F	N	
08	MTD057561763	ANACONDA ALUMINUM CO COLUMBIA FALLS REDUCTION PLANT	P	N	
08	MTD093291656	ANACONDA CO. SMELTER	F	N	
08	MT6122307485	BARKER HUGHESVILLE MINING DISTRICT	F	N	
08	MTD982572562	BASIN MINING AREA	F	N	
08	CON000802497	BONITA PEAK MINING DISTRICT	P	N	
08	COD980717938	CALIFORNIA GULCH	F	N	
08	COD981551427	CAPTAIN JACK MILL	F	N	
08	MT0001096353	CARPENTER SNOW CREEK MINING DISTRICT	F	N	
08	COD980717557	CENTRAL CITY, CLEAR CREEK	F	N	

Mining and Mineral Processing National Priorities List Sites as of April 21, 2016—Continued

Region	EPA Id	Site Name	NPL Status Code	Superfund Alternative Agreement Flag	CC Date
08	CON000802700	COLORADO SMELTER	F	N	
08	UTD988075719	DAVENPORT AND FLAGSTAFF SMELTERS	F	N	8/30/2012
08	COD980716955	DENVER RADIUM SITE	F	N	9/27/2006
08	COD081961518	EAGLE MINE	F	N	9/17/2001
08	MTD006230346	EAST HELENA SITE	F	N	
08	UT0002240158	EUREKA MILLS	F	N	9/21/2011
08	MT0012694970	FLAT CREEK IMM	F	N	
08	SDD987673985	GILT EDGE MINE	F	N	
08	UTD093120921	INTERNATIONAL SMELTING AND REFINING	D	N	9/27/2007
08	UT0002391472	JACOBS SMELTER	F	N	
08	UTD070926811	KENNECOTT (NORTH ZONE)	P	N	
08	UTD000826404	KENNECOTT (SOUTH ZONE)	R	Y	
08	MT0009083840	LIBBY ASBESTOS SITE	F	N	
08	COD042167858	LINCOLN PARK	F	N	
08	UTD081834277	MIDVALE SLAG	D	N	9/29/2011
08	MTD980717565	MILLTOWN RESERVOIR SEDIMENTS	F	N	
08	UT3890090035	MONTICELLO MILL TAILINGS (USDOE)	F	N	9/29/2004
08	UTD980667208	MONTICELLO RADIOACTIVELY CONTAMINATED PROPERTIES	D	N	9/2/1999
08	MTD021997689	MOUAT INDUSTRIES	F	N	9/27/1996
08	UTD980951420	MURRAY SMELTER	P	N	
08	CON000802630	NELSON TUNNEL/COMMODORE WASTE ROCK	F	N	
08	UTD980952840	RICHARDSON FLAT TAILINGS	P	N	
08	UTD980951388	SHARON STEEL CORP. (MIDVALE TAILINGS)	D	N	5/12/1999
08	MTD980502777	SILVER BOW CREEK/BUTTE AREA	F	N	
08	COD983769738	SMELTERTOWN SITE	P	N	
08	COD980806277	SMUGGLER MOUNTAIN	D	N	9/26/1996
08	CO0002378230	STANDARD MINE	F	N	

Mining and Mineral Processing National Priorities List Sites as of April 21, 2016—Continued

Region	EPA Id	Site Name	NPL Status Code	Superfund Alternative Agreement Flag	CC Date
08	COD983778432	SUMMITVILLE MINE	F	N	9/30/2013
08	MTSFN7578012	UPPER TENMILE CREEK MINING AREA	F	N	
08	COD007063274	URAVAN URANIUM PROJECT (UNION CARBIDE CORP.)	F	N	9/29/2008
08	UTN000802704	US MAGNESIUM	F	N	
08	CO0002259588	VASQUEZ BOULEVARD AND I-70	F	N	
08	SDD980717136	WHITEWOOD CREEK	D	N	9/25/1992
09	CAD983650011	ARGONAUT MINE	P	N	
09	AZD008397127	ASARCO HAYDEN PLANT	N	Y	
09	CAD980496863	ATLAS ASBESTOS MINE	F	N	9/2/1999
09	CAN000906063	BLUE LEDGE MINE	F	N	
09	NVD980813646	CARSON RIVER MERCURY SITE	F	N	
09	CAD980638860	CELTOR CHEMICAL WORKS	D	N	9/29/1989
09	CAD980817217	COALINGA ASBESTOS MINE	D	N	3/14/1995
09	AZD094524097	CYPRUS TOHONO MINE	N	Y	
09	AZ0000309013	IRON KING MINE - HUMBOLDT SMELTER	F	N	
09	CAD980498612	IRON MOUNTAIN MINE	F	N	
09	CA1141190578	KLAU/BUENA VISTA MINE	F	N	
09	CAD983618893	LAVA CAP MINE	F	N	
09	CAD980673685	LEVIATHAN MINE	F	N	
09	CA0001900463	NEW IDRIA MERCURY MINE	F	N	
09	NV3141190030	RIO TINTO COPPER MINE	N	Y	
09	CAD980893275	SULPHUR BANK MERCURY MINE	F	N	
10	WAD009045279	ALCOA (VANCOUVER SMELTER)	D	N	7/30/1996
10	OR0000515759	BLACK BUTTE MINE	F	N	
10	IDD980725832	BLACKBIRD MINE	P	N	
10	IDD048340921	BUNKER HILL MINING & METALLURGICAL COMPLEX	F	N	
10	WAD980726368	COMMENCEMENT BAY, NEAR SHORE/TIDE FLATS	F	N	

Mining and Mineral Processing National Priorities List Sites as of April 21, 2016—Continued

Region	EPA Id	Site Name	NPL Status Code	Superfund Alternative Agreement Flag	CC Date
10	IDD984666610	EASTERN MICHAUD FLATS CONTAMINATION	F	N	
10	ORN001002616	FORMOSA MINE	F	N	
10	OR7122307658	FREMONT NATIONAL FOREST/WHITE KING AND LUCKY LASS URANIUM MINES (USDA)	F	N	9/28/2006
10	WAD000065508	KAISER ALUMINUM (MEAD WORKS)	F	N	
10	ORD052221025	MARTIN-MARIETTA ALUMINUM CO.	D	N	12/29/1994
10	WAD980978753	MIDNITE MINE	F	N	
10	IDD081830994	MONSANTO CHEMICAL CO. (SODA SPRINGS PLANT)	F	N	9/20/2000
10	ORD009412677	REYNOLDS METALS COMPANY	F	N	9/29/2006
10	AK0001897602	SALT CHUCK MINE	F	N	
10	WAD980722789	SILVER MOUNTAIN MINE	D	N	9/28/1992
10	IDD980665459	STIBNITE/YELLOW PINE MINING AREA	P	N	
10	ORD050955848	TELEDYNE WAH CHANG	F	N	9/13/2002

Mr. GIBBS. OK. Well, the next round of questions I want to get more. I have two goals here today: to figure out what we can do, legislatively, to improve the Good Samaritan. You, as the EPA, are you agreeable that that is an issue, that we should take a legislative proposal to try to fix some of these problems?

Mr. STANISLAUS. Well, you know, we will certainly participate with you and the committee on any legislative efforts. Frankly, we don't know whether it is a legal gap, or whether it is a perception gap that inhibits, or whether there is a cost issue that inhibits Good Samaritans working for us.

Mr. GIBBS. And the second goal I want to get to too is the role of the EPA in these abandoned mines. And we will get to the spill in August, you know, what is happening there. But at this time I am going to turn the line of questions over to Mrs. Napolitano, and we will get to that in the next round.

Mrs. NAPOLITANO. Thank you so very much, sir.

Mr. Stanislaus, there are three different acts that most mines have to be able to help pay for the cleanup: the Oil Pollution Act; SMCRA [Surface Mining Control and Reclamation Act]; and Superfund. What about hardrock?

Mr. STANISLAUS. Well, within EPA's jurisdiction, hardrock mines that cause a significant enough risk to rivers and to public health——

Mrs. NAPOLITANO. And?

Mr. STANISLAUS. And then we address them. We have 137 sites that we are addressing through the Superfund program and our limited resources.

Mrs. NAPOLITANO. But do the miners of the hardrock pay into the fund, or—to be able to clean up like the others?

Mr. STANISLAUS. That is the taxpayer—that is the normal appropriations process.

Mrs. NAPOLITANO. That means the taxpayer.

Mr. STANISLAUS. That is right.

Mrs. NAPOLITANO. In 1972 there was a fee charged per acre. How much was that?

Mr. STANISLAUS. That I would not know.

Mrs. NAPOLITANO. $2 per acre.

Mr. STANISLAUS. OK.

Mrs. NAPOLITANO. A concern is, of course, is that some of these hardrock mines are creating problems, but—and we have folks that agree that there should be a way to be able to hold them accountable to—for the cleanup. So those are questions that I might have.

Over the years there—the taxpayers have been left to clean up the mess. Is this concept similar in approach taken by the administration to propose a fee for hardrock mine operations to address this legacy?

Mr. STANISLAUS. Yes, the administration has, in fact, proposed a fee to pay for the cleanup of these hardrock mines.

Mrs. NAPOLITANO. What is that fee being proposed?

Mr. STANISLAUS. I am sorry, when or——

Mrs. NAPOLITANO. How, how much?

Mr. STANISLAUS. Oh. That is brought by the Department of the Interior, and I don't know the specifics of that——

Mrs. NAPOLITANO. Oh, OK, that is fine. Would Good Samaritan legislation be more impactful if it appeared with increased funding?

Mr. STANISLAUS. Yes, I think that the comprehensive solution to the hundreds of thousands of sites requires a comprehensive solution. So EPA has a sliver through additional Superfund resources. Other Federal agencies have responsibility, as well. Clearly, a dedicated pot of money to deal with the cleanup of that—and Good Samaritan does play a role, but it is only one of the many tools that are necessary to deal with the comprehensive problem.

Mrs. NAPOLITANO. Well, earlier this year the administration proposed to create the Abandoned Mine Lands program, the AML, through a new fee. How important is this, creation of this, to help clean up?

Mr. STANISLAUS. Well, clearly, the administration put forward that because there is a significant gap. We have hundreds of thousands of sites——

Mrs. NAPOLITANO. What are they basing it on? Because if there is—if they are finding out this is a need, what are they basing this need on?

Mr. STANISLAUS. Again, that specific information is probably best answered by Department of the Interior, how they calculated that, so——

Mrs. NAPOLITANO. Well, then, what are some of the tools that EPA has at its disposal to address these abandoned mines?

Mr. STANISLAUS. The tools that EPA has, again, it is a small subset, where it is high enough risk where it comes to our attention, we do investigation and then we develop a cleanup plan to clean up——

Mrs. NAPOLITANO. But only if it comes to your attention.

Mr. STANISLAUS. That is right.

Mrs. NAPOLITANO. You don't have something that outlines the priorities these mines might have.

Mr. STANISLAUS. No. We don't have a mine program, per se. It is abandoned mines, among other kinds of contaminated sites where——

Mrs. NAPOLITANO. Does the Conference of Mayors and National Governors Association ever relate to EPA any of their needs of prioritizing, and is part of that 137 that you are talking about included?

Mr. STANISLAUS. I have not had any exchange with the Governors or the mayors association regarding this topic, so——

Mrs. NAPOLITANO. Well, maybe we should start looking at that, because they are the ones who are going to have to be impacted by their pollution, or by their emergency—ability to clean it up.

What steps has EPA taken under the existing regulatory framework to encourage more Good Samaritans to restore watersheds?

Mr. STANISLAUS. Yes, again, going back to the issues that Good Samaritans have identified—that is the potential liability concerns—we have clarified that if a Good Samaritan goes in and does a cleanup, they would not be held liable under the Superfund program, and then, once they are done with the cleanup, they would not have to get a discharge permit under the Clean Water Act.

Mrs. NAPOLITANO. Well, does the use of the Superfund on abandoned mines impact your ability to remediate other nonmining toxic sites?

Mr. STANISLAUS. Well, clearly, we have a limited set of resources. Every year we have a backlog of sites. So, I mean——

Mrs. NAPOLITANO. So you do not have enough budget to be able to carry out the needs.

Mr. STANISLAUS. Yes. The need is greater than the amount of resources that we have in the Superfund program.

Mrs. NAPOLITANO. Would then the inventory of these abandoned mines throughout the Nation—not just on Federal lands—including Native American lands, help the resource for—be a helpful resource?

Mr. STANISLAUS. Yes. I mean it could be that there are other agencies probably in a better position for that. We do have an inventory of the highest risk Superfund sites. But, again, our role on mining sites is relatively small in those circumstances.

Mrs. NAPOLITANO. Mr. Chairman, I would like to be able to have a list of those mines that are in the 137 list that you have, so we can help identify and maybe get further information from not only the Members of Congress, but also their Governors, to find out how they are going to be—should they have—how would I say—an unfortunately catastrophe on their hands.

Mr. STANISLAUS. Sure, we will get that.

Mrs. NAPOLITANO. And I would like to be able to put in more questions later. Thank you, sir.

Mr. GIBBS. Mr. Babin?

Dr. BABIN. Thank you, Mr. Chairman. And, Mr. Stanislaus, I had a couple of questions I wanted to talk to you, ask you about.

In regards to the big spill into the Animas River, had a private-sector company spilled more than 3 million gallons of pollutants into a water body, how would the EPA have responded?

For instance, in 2014, in the Elk River near Charleston, West Virginia, several thousand gallons of chemicals—not 3 million, just several thousand gallons—were released. What happened to the company that was responsible? What happened to its executives? They faced strong enforcement and bankruptcy from the EPA. The executives faced criminal charges. How should the EPA be treated, in light of the fact that it spilled 400 times as many gallons of pollutants into the water of the Animas River during the Gold King Mine disaster?

Mr. STANISLAUS. So, from a response perspective, the response is identical. In terms of responsibility for, and the facts surrounding that, we have done an internal review, and we have disclosed that. There is an independent review being done by the Department of the Interior, and we are going to wait to see the results of that, and whether proper procedures were followed or not.

Dr. BABIN. OK. Well, how will the EPA clean up the Gold Mine site? Will it use existing funds from its fiscal year 2015 to 2016 budgets, or is the taxpayer going to have to foot the bill in the President's fiscal year 2017 budget that will be submitted next February?

Mr. STANISLAUS. Yes, to put it in context, the Animas River and the mining complex, there was about 330 million gallons per year being released into the Animas River. The whole reason that the State of Colorado and stakeholders asked EPA to be involved was because of those releases. And we got involved to address the mining complex and the entire State of Colorado, which had the highest risk to river quality, so that is why we were involved, and we used Superfund resources to address the request of the State and stakeholders.

Dr. BABIN. OK. Well, you didn't answer my question about how it is going to be paid for. You said Superfund funds, but the—which budget is that going to come out of? And will it be new funds from the 2017 budget, or is it going to be from the 2015 and 2016 budget?

Mr. STANISLAUS. Well, the cost incurred to date is based on our current budget. Clearly, there are—the stakeholders have asked, and we are engaged in the process of whether they should be designated a Superfund site. So we are going through that process right now.

If it were to be designated a Superfund site, we would then pursue responsible parties, if they are around. If they are not around, then we would use the Superfund resources that are allocated, appropriated, on a yearly basis.

Dr. BABIN. So you don't know just yet. Is that what you are saying?

Mr. STANISLAUS. That is right.

Dr. BABIN. The EPA has admitted it took longer than 24 hours to notify parties of a release, and that was the Navajo Tribe—in-

cluding the Navajo Tribe. What is the law regarding this notification requirement, and why did the EPA not follow the law?

Mr. STANISLAUS. That is actually not entirely correct. Notification occurred approximately an hour, an hour-and-a-half from the incident. We have——

Dr. BABIN. You notified the Navajos in an hour-and-a-half?

Mr. STANISLAUS. No. If I can, notification to the immediate vicinity stakeholders, to the town of the city of Durango, that occurred within an hour, an hour-and-a-half. And we acknowledge that Navajo, New Mexico, there was a delayed notification. All notification occurred before the plume, before any of those downstream users of the river were impacted.

And actually, the notification occurred to enable pre-impact sampling, so we can compare that with, once the plume impacted those areas.

Dr. BABIN. Well, it is a mystery to me why the Governor of New Mexico did not hear about the EPA spill from the EPA and, instead, had to find out from the Navajos.

Mr. STANISLAUS. Yes.

Dr. BABIN. That the spill had occurred.

Mr. STANISLAUS. Well, that is a fair criticism. I mean I think that, we, working with the States, can do better. I issued a memo to really ramp up the broader notification. Incidents like this, which is multistate, a larger regional issue, we should do a better job. We are in the process of augmenting the notification process, which is done jointly with EPA and States.

Dr. BABIN. OK. While EPA has had years of experience in cleaning up Superfund sites, what expertise does EPA and its remediation contractors have in dealing with abandoned mine sites? Does EPA remediation contractors have particular expertise in mining engineering and abandoned mine cleanup technologies? And why should the EPA be the lead Federal agency in even cleaning up mine sites?

Mr. STANISLAUS. Yes, with respect to this particular site and other mining sites like this, we bring together, both internally and externally, the kind of expertise that deal with the cleanup of abandoned mines.

Dr. BABIN. Thank you.

Mr. STANISLAUS. OK.

Mr. GIBBS. Thank you. Ms. Johnson, you are recognized.

Ms. JOHNSON. Thank you very much, Mr. Chairman. In 2011 the Government Accountability Office, or the GAO, could not come to a definitive estimate on the number of hardrock mines on Federal or other lands. How critical is it, having this information, and determining the scope and nature of the abandoned mines across the country?

Mr. STANISLAUS. Yes, I mean, I think more information on the number of mines is important. But equally, and probably more important, is the subset of mines that have the highest risk to river quality. So I would say it is not just a number, but also the data behind those mines.

Ms. JOHNSON. And there are different statutes that are sometimes conflicting as to whose responsibility it is. I know that EPA is blamed for everything. But I am trying to determine at what

point does EPA get the full responsibility after a mine is abandoned?

Mr. STANISLAUS. Again, EPA has an extremely small role in this situation. So EPA—again, we are currently involved in 137 sites where we are doing long-term cleanup. There is a larger—relatively small additional number where we do investigations.

So, the small subset that have the highest risk, where we get involved—and those—the cleanups are fairly big. I mean there are hundreds of millions of dollars of cleanup for those kind of mining situations.

Ms. JOHNSON. What would you estimate the budget needs to be to take the responsibility for all the abandoned mines?

Mr. STANISLAUS. You know, we don't really have a good estimate on that. I had an estimate done by somebody else, and I don't really have that in front of me.

Ms. JOHNSON. But I would suspect it would be quite large.

Mr. STANISLAUS. Yes. I can get you that—we have not done an estimate. I know there are estimates done by others, and we can get that to you.

[The information follows:]

Representative Johnson requested cost of mine cleanup—Mr. Stanislaus was referring to a GAO study: ABANDONED MINES: Information on the Number of Hardrock Mines, Cost of Cleanup, and Value of Financial Assurances, GAO-11-834T: Published: Jul 14, 2011. Publicly Released: Jul 14, 2011. See: http://www.gao.gov/products/GAO-11-834T.

Ms. JOHNSON. Has the process been updated to determine at what point EPA takes on the full responsibility or at what point does the private mine lose its responsibility for cleanup?

Mr. STANISLAUS. So first, you know, EPA generally gets involved when a State—typically, in the mining situations, where the State asks us to be involved because of the magnitude of the mine and the risk. So that is how we typically get involved.

Mr. JOHNSON. Is it a frequent thing that the private mines—owners or supervisors or whatever—go out of business, abandon or change their name so that they cannot be held responsible?

Mr. STANISLAUS. Yes. Well, again, let me answer the second part of your question first. So, EPA would pursue a viable responsible party, if they exist. And our experience is many of these sites don't have a viable responsible party who is there to pay for those resources. And I should note that is one of the reasons we are pursuing a financial assurance rule to partly address that issue.

Ms. JOHNSON. Thank you, Mr. Chairman. Thank you.

Mr. GIBBS. Mr. Hardy?

Mr. HARDY. Thank you, Mr. Chairman. You know, I am from Mesquite, Nevada, which—Nevada—some would believe that, when they think of Nevada, they think of Las Vegas. But its roots are really in the field of mining. Literally, thousands of mines were opened up in Nevada before it even became a State. It was in a territory. So there's, literally, thousands of open mines out there, hardrock mines, small ones and some larger ones.

With that being said, can you tell me how many contaminated sites there are in Nevada?

Mr. STANISLAUS. I can't tell you, no.

Mr. HARDY. Could I get that information?

Mr. STANISLAUS. The information that the EPA has, sure.

Mr. HARDY. Yes, that is all I am asking.

Mr. STANISLAUS. Yes.

[The information follows:]

Representative Hardy requested a list of contaminated sites in Nevada: Carson River Mercury Site and Rio Tinto Copper Mine.

Mr. HARDY. All you have, not anything else.

You know, Nevada's nickname was "The Silver State," so it is a big issue in Nevada. It is still one of its better paying job commodities in Nevada.

A few weeks ago I had the opportunity to sit and question Administrator McCarthy. And I am going to go along the same lines of questioning with you that I did with her. And I appreciate that you have a chemical engineering mind, so you know the value of having that background. Is that correct?

Mr. STANISLAUS. Yes.

Mr. HARDY. How many archeological—or geological engineers do you have?

Mr. STANISLAUS. I don't know, but I can get that to you.

Mr. HARDY. How many hydrological?

Mr. STANISLAUS. Well, similarly, I can give you a breakout of the various disciplines that we have——

Mr. HARDY. Information we had from that meeting, none. We have more on this committee than you have in the EPA.

And so, with that questioning, I ask myself, you are trying to move forward in implementing some kind of cleanup process, words of your testimony, the "effort to reduce risks posed by contaminated land." Do you believe that this, what you come up with, is going to be one size fits all for every State?

Mr. STANISLAUS. I am sorry, are you referring to the Good Samaritan——

Mr. HARDY. Yes.

Mr. STANISLAUS. I think so, because the issues of Superfund liability may arise around the country. So we think the issue of an innocent party, a Good Samaritan going in and wanting to go and do some really good work, and being protected from Superfund liability while they are doing their work and long-term responsibility, it would apply wherever.

Mr. HARDY. OK. What—I would like to go a little further with this. Is the—it may be—on the protection of legal issues, but without having the expertise to actually develop this through hydrological and geological sites, how do you plan on implementing that plan? I mean where do you get the expertise from that?

Mr. STANISLAUS. Well, the goal of the Good Samaritan administrative tools is for an outside entity to develop a plan that we would review, and that would be part of the agreement. But I am pretty confident that we have the expertise to review those plans.

Mr. HARDY. OK. I guess one of the reasons I bring this up is I am introducing a bill that happens to have—it is H.R. 3734, and it has to do with education and mining. Those funds have been cut over the last 20 years, and continue to be diverted somewhere else—even more than that. We are at a shortage of those type of

engineers, mining engineers. So I am hoping that my colleagues will look at maybe endorsing this bill to help bring some of that expertise on that, it helps folks like you better manage your job and better fulfill your field in these aspects.

But along with that being said, my frustration since Nevada has become a State, these mines—not only do they have to submit to the EPA and the administration, all administrations, the environmental side of issues, of how to open these mines, but they also have closure within that process.

Why are we not—I mean does there seem to be a problem here in other States that I am missing? Because Nevada has—you can open the mine once you are approved, and you have to meet certain closure sites. Some of these came well before it was a State, I understand. But we don't have a lot of water, so we don't get a lot of water contamination in Nevada with these type of mines.

But I guess I am just trying to understand why we are not forcing these closures the way they should be—when they submit the plan, you should be following through their plan, instead of having to redevelop that. And it shouldn't be—have to have some Superfund, in most cases, other than to protect that somebody doesn't go out of business, and shouldn't have to be able to protect these folks that want to do it as the—on their dollar. I appreciate that.

Mr. STANISLAUS. Well, I think you are exactly right. Ideally, when you have a new mine opened up, you do have to have a closure plan, and have adequate financial assurances. And just to underscore, the large, overwhelming majority of these mining sites are managed by States. I know you are going to hear from a State witness later on. And that is, frankly, where it should be the lead, with the Federal Government providing a supplement.

We are engaged with the States and other stakeholders, whether augmentation or financial assurances are necessary, because there are gaps between just closure and safe closure. That has arisen, and is a reason for our involvement from a Superfund perspective.

Mr. HARDY. Thank you. I have another question, but my time is out.

Mr. GIBBS. Before I move on to the next question, for a matter of clarification for the record, did I hear you say the EPA does not have a mining engineer or a hydrologic engineer on staff, but that you rely on the private-sector contractors?

Mr. STANISLAUS. No. I said we have a mixture. We have expertise in-house, engineering, and hydrogeological expertise, and then, on a side-by-side basis, we also bring to bear——

Mr. GIBBS. So the EPA does have mining engineers on staff?

Mr. STANISLAUS. Well, we have folks involved experienced in mining and cleaning up mining sites.

Mr. GIBBS. They are not engineers, though.

Mr. STANISLAUS. Mining engineers, I will have to get back to you.

Mr. GIBBS. I believe you don't, but——

Mr. STANISLAUS. OK.

[The information follows:]

Chairman Gibbs' inquiry regarding EPA mining engineers: EPA Region 8's mining coordinator has a Mining Engineering degree from Colorado School of Mines. The EPA On Scene Coordinator (OSC) on-site during the incident has a Geological Engineering degree from Colorado School of Mines. Addi-

tionally, EPA contractors include staff with science and engineering backgrounds, and Region 8 consults with state partners at the Colorado Department of Public Health and the Environment and Division of Reclamation and Mine Safety who have many years of experience in mine site remediation. In conducting mining-related operations, the EPA uses private companies with mining engineers to conduct mine remediation work.

Mr. GIBBS. OK. Mrs. Kirkpatrick?

Mrs. KIRKPATRICK. Thank you, Mr. Chairman and Ranking Member, for having this hearing. As you know, this spill impacted my district fairly directly. I represent the Navajo Nation, and also the city of Page, which is on Lake Powell. And we were in immediate contact with your department, and also with those communities, as this unfolded.

And when I went to the city of Page for a meeting with their chamber, with their school superintendent, with community leaders, I learned that there is an overarching plan to do cleanup of these mines, but evidently there is a lack of funding. And I have since learned that about $300 million has been cut from the EPA's budget, which should be directed toward that cleanup.

But you mentioned in your answer to my colleague's line of questioning about a safe closure of a mine. Would you just describe for the committee what that entails, and about what the cost would be? Because I know there are hundreds, maybe thousands of mines along the San Juan River that have not been safely closed. So just describe for us what that means, what that entails.

Mr. STANISLAUS. Sure, I will try to do my best. I may need to supplement that after the hearing, but we are looking at the need to have more comprehensive financial assurance, because our experience is that the mines that are being closed are being inadequately closed, from an environmental perspective. The most acute is acid mine drainage issues, which impact rivers, so that we want to make sure, with respect to the rule that we are pursuing, that enough financial assurance covers not just base reclamation, but comprehensive closure, and also addressing acid mine drainage.

Does that answer your question?

Mrs. KIRKPATRICK. Not exactly. I would like to know a little more detail about—because my understanding, from talking to people in the area, is a lot of these mine shafts from various mines are connected. And so you might be dealing with—and I am just using a hypothetical at this point, but 10 to 15 different mining operations that are directly connected, in terms of the cleanup.

I am just trying to get an idea of the impact and the magnitude of trying to safely close these mines.

Mr. STANISLAUS. Yes. I may need to get back to you more with more comprehensive——

Mrs. KIRKPATRICK. That is fine.

Mr. STANISLAUS. And you are absolutely right. We need to separate long-term abandoned mines, which are interconnected complexes. So you have to deal with it from a whole-area perspective.

Mrs. KIRKPATRICK. Right.

Mr. STANISLAUS. So——

Mrs. KIRKPATRICK. And I guess my point is that this is fairly complicated.

Mr. STANISLAUS. Yes.

Mrs. KIRKPATRICK. It is not just simply, you know, putting up a door on an old abandoned mine shaft, that it is—but let's visit some more about that.

My other question is have there been closures of abandoned mines and cleanups that you consider successful? And, if you can, give us an example of that.

Mr. STANISLAUS. Sure. Of the 137 or so—I can get back to you with a list, and——

Mrs. KIRKPATRICK. OK.

Mr. STANISLAUS [continuing]. With the elements of the cleanup.

[The information follows:]

Representative Kirkpatrick requested information on Superfund NPL sites that are construction complete: These are listed as "CC" in the table on page 8.

Mrs. KIRKPATRICK. Thank you. I appreciate that.

And then, my last point is that, you know, 215 miles of the Navajo Nation are along the San Juan River, and that is agricultural land. So I was late getting to this committee, because I was in a Committee on Agriculture hearing. But we are really concerned about soil contamination. So I hope that you will continue to monitor that water, but also the soil, because we have reason to believe that this contamination has been going on for a long time.

Mr. STANISLAUS. Yes. Clearly, it is a long-term issue. And so at least most immediately we are in discussions with the Navajo and all other stakeholders about a long-term monitoring plan. There are also separate conversations about potential Superfund listings. So that is all in the works.

Mrs. KIRKPATRICK. Sure.

Mr. STANISLAUS. Yes.

Mrs. KIRKPATRICK. Thank you, and I yield back.

Mr. GIBBS. Mr. Rice, any questions?

Mr. RICE. Thank you, Mr. Chairman.

Let me ask you this, since there is apparently no accountability in this administration. Was anybody fired over this 3-million-gallon spill of toxic chemicals into this river?

Mr. STANISLAUS. Well, again, as I answered earlier, from a response perspective, we have moved forward, we will continue to move forward. From an accountability perspective, we have done internal review and——

Mr. RICE. Was anybody fired?

Mr. STANISLAUS. No.

Mr. RICE. OK. Was anybody disciplined?

Mr. STANISLAUS. Well, again, we are waiting for independent investigations by the Department of the Interior and the Office of Inspector General——

Mr. RICE. That is what I thought.

Mr. STANISLAUS [continuing]. To determine whether——

Mr. RICE. How long——

Mr. STANISLAUS [continuing]. Were followed or not.

Mr. RICE. This gold mine was closed, right?

Mr. STANISLAUS. I am sorry?

Mr. RICE. This gold mine was closed?

Mr. STANISLAUS. It was abandoned, that is right.

Mr. RICE. How long has it been abandoned?

Mr. STANISLAUS. I think the most recent activity was a couple of decades ago.

Mr. RICE. OK. And so, the company that did it, it no longer exists, or it does exist?

Mr. STANISLAUS. Well, one of the companies does exist.

Mr. RICE. OK. And do they bear some of the financial responsibility?

Mr. STANISLAUS. Well, they are clearly a responsible party, and EPA's plan is to pursue——

Mr. RICE. Have they been paying for the maintenance of the mine?

Mr. STANISLAUS. Have they been paying for the maintenance of——

Mr. RICE. You don't know?

Mr. STANISLAUS. I don't know the answer.

Mr. RICE. OK. On new mines—you know, you raise some interesting issues. You said you are looking at additional financial assurance. I know there is the Haile Gold Mine in South Carolina they are looking at reopening right now. And I know the Army Corps of Engineers has been very involved in looking at remediation.

There is apparently a Federal and a State permitting process, correct?

Mr. STANISLAUS. Yes, depends on—yes, I don't know the particular situation, but it can depend on the mine.

Mr. RICE. OK. Oh, it depends on the mine. So certain mines, there is no Federal permitting process for?

Mr. STANISLAUS. Yes, I believe that is—some mines are on Federal property, some mines are mixed ownership, some mines are private.

Mr. RICE. OK. So if there is a mine on private property that is going to produce some toxic material, there is no Federal permitting requirement for that?

Mr. STANISLAUS. Yes, not from a—well, let me get back to you—because other Federal agencies have various other responsibilities on mining sites, so let me get back to you with where Federal authority would touch on mining sites.

Mr. RICE. OK. If there—well then, let's just limit it to mines on Federal property. Is there some kind of a Federal permitting requirement for that? If I wanted to open a mine on Federal property, would I have to get a Federal permit to do that?

Mr. STANISLAUS. Well——

Mr. RICE. Would you guys review it? Would you approve it?

Mr. STANISLAUS. Yes, there is a review process.

Mr. RICE. All right. And I wouldn't have to give you clear bond or financial assurance that I had the capability to clean it up when I got through? Surely to God I would have to give you that.

Mr. STANISLAUS. Well, yes. Some bonds are actually in place. State programs and some bonding or financial assurance are done through Federal programs, most notably BLM and Forest Service.

Mr. RICE. OK. So we are talking about Federal property again. If I was going to do it on Federal property, I wouldn't have to give

you very clear assurance that I had the capability and set aside the money to clean that site up?

Mr. STANISLAUS. Yes. So I think the question is whether that financial assurance, be it through a State program or a Federal program, is adequate. And what our experience has been, there have been enough mining sites where the closure and reclamation—there is a gap to deal with the environmental issues.

Mr. RICE. All right. There is obviously State regulators, I would assume, in every State that deals with this. Right?

Mr. STANISLAUS. That is right.

Mr. RICE. And I would assume that they all would require bonding and financial assurance also. Right?

Mr. STANISLAUS. That is right.

Mr. RICE. So it is really not a problem for new mines, is it?

Mr. STANISLAUS. Well, that is currently what we are examining. We are looking at where there are gaps between financial assurance, whether it is done by State programs——

Mr. RICE. OK.

Mr. STANISLAUS [continuing]. Or a Federal program.

Mr. RICE. And this—and what about continuously operating mines? Let's say mines that were open—have been open for decades. There is a big copper mine out there in the West, Kennecott. Surely they are setting aside reclamation money. Surely they have set aside enough money to close the mine. Is that right?

Mr. STANISLAUS. I wouldn't know.

Mr. RICE. Gosh, you are the EPA. You don't know that?

Mr. STANISLAUS. Well, again, EPA is not——

Mr. RICE. What do you do from 9 to 5?

Mr. STANISLAUS. I am sorry? I am sorry? I couldn't hear you.

Mr. RICE. Look——

Mr. STANISLAUS. No——

Mr. RICE. What I want to——

Mr. STANISLAUS. No, sir. We are very much——

Mr. RICE. I mean I want to avoid this problem happening again.

Mr. STANISLAUS. We are involved in dealing with the risk of these sites——

Mr. RICE. I want to have—I want to avoid this problem happening again. And surely you are not going to let people—the EPA is not going to let people open these mines and create these toxic situations without putting aside adequate reserves to close the mine. Is that true or is that not true?

Mr. STANISLAUS. Well, clearly, the shared responsibility across the Federal Government is for that to be the case. And that is—currently we are examining that, not only from a Federal perspective, but from a State perspective.

Mr. RICE. Wow. OK. This Gold King Mine, you say it has been closed for decades. And you don't know who is paying for the monitoring of that site and the cleanup of that site. You don't know that.

Mr. STANISLAUS. [No response.]

Mr. RICE. You don't know if—you said that there are some surviving companies from this Gold King Mine. They are not bearing the responsibility for this?

Mr. STANISLAUS. Well, again——

Mr. RICE. I mean I know——

Mr. STANISLAUS. Immediately——

Mr. RICE. I know if EPA went in there and busted out their dam and let all this toxic water loose, then I am sure that EPA or their contractors have some liability. But for the ongoing maintenance of this mine, if there are viable parties still existing that mine this ore, don't they bear the ultimate financial responsibility for this?

Mr. STANISLAUS. That is right, if financial resources are in existence.

Just to be clear, over the past decades it has been at the lead of the State of Colorado dealing with the stabilization, dealing with the sites. We—EPA recently got involved at the request of the State and local stakeholders.

Mr. RICE. Thank you, Mr. Chairman.

Mr. GIBBS. A couple points of clarification. I think in the last round of questions there about the mines in Colorado, I believe there are three.

Mr. STANISLAUS. Yes, I believe that is——

Mr. GIBBS. And one of them has been putting millions of dollars in helping to clean up, and the other two are—there's no owners. Is that correct? They are totally abandoned. I mean there is no responsible party. There is one party there, one of the——

Mr. STANISLAUS. For one of the mines, that is right.

Mr. GIBBS. Has been investing dollars to try to do cleanup. For clarification.

Also, for clarification on the question about financial assurance, is it true that the financial assurance only applies to active mines trying to do a closure? So the issue at these abandoned mines, where we got this—it is more than two decades, I think it is about a century—that are totally abandoned, that is—really, a moot discussion. There is no financial assurance.

Mr. STANISLAUS. That is correct.

Mr. GIBBS. OK, thank you. Mr. Nolan?

Mr. NOLAN. Thank you, Mr. Chairman. Just a couple of quick questions here that I have. And we have got about—I am told as many as 7 billion metric tons of waste rocks piled up all over Minnesota's iron range, up in northeastern Minnesota. Exposed rock. Much has potentially hazardous consequences as a result of some of the sulfuric content, and its impact on the lakes and the rivers and waters in the region.

So—and there are some companies now that are moving in, and they are reprocessing a lot of that ore. The ore was so rich back in the day that anything that had anything less than 40 percent iron content was just discarded.

My question of you is have you seen any new technologies that we could potentially find some ways to incentivize to go in and reprocess and clean up in the process and take greater advantage of the mineral resources that remain in those potentially toxic piles all over our range?

Mr. STANISLAUS. Well, I have heard about some emerging technologies. I think it is probably—I would say right now there are some efforts to do a pilot in the fields. I do think that many of the researchers believe it is promising. So I don't really have a com-

prehensive assessment, but I do know that there is some research going on in this area.

Mr. NOLAN. You know, we—I say "we"; I wasn't here—but, you know, the Bureau of Mines and Minerals was largely abandoned. I have seen reports from the National Mining Association, from the land grant universities, from a whole variety of other sources that say we need to fund, you know, a national research center to study and help facilitate the development of new mining technologies and environmental technologies associated with the mining and/or the cleanup. Do you see where something like that would be an enhancement to, you know, what we are trying to do here in the Good Samaritan, you know, mining and development cleanup initiatives?

Mr. STANISLAUS. Well, yes. I am not sure of the connection to the Good Samaritan. I think, clearly, the more and better technology——

Mr. NOLAN. You don't see the connection? What is the Good Samaritan all about?

Mr. STANISLAUS. I am sorry?

Mr. NOLAN. You don't see a connection between the Good Samaritan mining and cleanup activities——

Mr. STANISLAUS. Yes, so——

Mr. NOLAN [continuing]. And study and research on how to mine and how to clean up in a way that is——

Mr. STANISLAUS. Yes. I mean I think research and technology is all good. And so I would say that, yes, that makes sense.

Mr. NOLAN. OK.

Mr. STANISLAUS. And the Good Samaritan projects are relatively small projects to kind of stabilize sites.

Mr. NOLAN. Yes.

Mr. STANISLAUS. You know, so——

Mr. NOLAN. Well, I mean, if we don't have $33 billion or $72 billion, or whatever the number is—then we better be looking at something. You know? And science often has a way of leading us to progress. I am glad that you do see the connection after reconsidering it. Thank you.

Mr. GIBBS. Mr. Stanislaus, we checked on your roster of employees. You do not have any mining engineers listed. So you say that you have personnel that have expertise in cleanup. You know, cleaning up a spill compared to cleaning up some of the other sites that aren't mining sites, you know, when I talk to engineers, the complications and the details with the stuff that goes into mining are a lot different than some of those other cleanups. So, obviously, the EPA—I think, to be honest—has to rely on the private sector expertise.

Now, then the question goes further. My first question dealing with this Gold King Mine incident, that private contractor—I don't know anything about them. Do they have mining engineers? Or what was their expertise level?

Mr. STANISLAUS. Well, they had mining experience, but they also brought in subcontractors with specific mining expertise.

Mr. GIBBS. Can you provide details for that?

Mr. STANISLAUS. Sure.

Mr. GIBBS. Because I think that there is a big, big question of competency on this whole issue out there in Colorado.

To give you an example, in 2008 the Tennessee Valley Authority had a major coal ash spill, and they brought in numerous independent investigators from the private sector, because they were fearful, they didn't want it to happen again, because they have other coal ash facilities. And in this case, the EPA, as you said, Department of the Interior is doing an investigation, which I think is through the Bureau of Reclamation. Is that correct?

Mr. STANISLAUS. That is right.

Mr. GIBBS. What technical expertise does the Bureau of Reclamation have in this with mines? Because I—go ahead.

Mr. STANISLAUS. Well, that is probably best answered by them, but the Bureau of Reclamation is very much involved in mining situations. They are also, as I understand it, also doing peer review with other experts.

Mr. GIBBS. OK, because I would—you know, a little bit of research I did, the Bureau of Reclamation isn't really in the mining business. They are more in the water infrastructure business. Bureau of Land Management probably has a little bit more expertise.

So I question, you know, why—and then why aren't—isn't the EPA bringing—like the Tennessee Valley Authority, who brought in independent, totally independent, not another Government agency, to do a full-fledged investigation. I mean you are not doing that, right?

Mr. STANISLAUS. Well, yes. I mean so there are two additional investigations going on right now.

Mr. GIBBS. Who is doing them?

Mr. STANISLAUS. Well, Department of the Interior and the Office of Inspector General.

Mr. GIBBS. Wait, what is that?

Mr. STANISLAUS. The Office of Inspector General.

Mr. GIBBS. Oh, for the Department of—EPA, or——

Mr. STANISLAUS. Yes.

Mr. GIBBS. But there is no—there is going to be no contracted other private entities like the Tennessee Valley Authority did?

Mr. STANISLAUS. No.

Mr. GIBBS. OK. Yes, just to go back on the Bureau of Reclamation issue, do they have a water quality lab? Do they do any water quality research, laboratory studies or analysis?

Mr. STANISLAUS. Again, this has been—the Bureau of Reclamation and Department of the Interior is leading this study, and——

Mr. GIBBS. Well, I guess I am questioning their expertise to be the lead agency in that investigation, because I don't believe that they have expertise in heavy metal migration, water quality analysis capabilities, expertise in mine tunnels. That is what we need to have, expertise—people who are really experts in that, not self-declared experts.

So I think that is a question of what is going on, because—I am going back to Mr. Rice's line of questioning. You know, nobody has been held accountable. And you are saying, well, the investigation goes on, and that is fair. But we have thousands of these mine sites where we could have more disasters, and we need to make sure it doesn't happen again. And so the EPA should do all they can do to make sure that the investigations are legit and carried out by people that are credible.

And it is kind of like the fox and the henhouse regulating themselves, you know. Obviously, the EPA was in partnership or contract with this, and working hand in hand with this contractor on this spill when they opened up the mine.

And we had leach issues coming out, but apparently nobody knew what was behind that closure from the sediment rocks and everything, and that is when it broke loose. And it didn't have the right things in process to—like a catch basin or anything to catch that. So they—is that clear, they were really caught by surprise?

Mr. STANISLAUS. Well, yes. In the—our own internal review that we have issued, it is clear that that risk was identified, and also concluded that, if it was capable to be done, going behind the mine to identify there was a pressurized situation would have been ideal. But also it identifies that it was not—given the sheer grade of the mine below that—the contract actually did that, they were able to get behind the mine and actually look at those pressurized conditions—confirm it was not pressurized. In this situation they were not able to do that.

And our internal review concluded that they are not sure it was possible to prevent a blowout.

Mr. GIBBS. Your internal review, which are self-declared experts, not the mining engineer experts.

Mr. STANISLAUS. Well, again, our role is cleanup. We were brought—the State of Colorado and stakeholders asked it to be addressed because of this very risk. We were brought to this situation because of the risk that stakeholders identified, the risk of——

Mr. GIBBS. Well, I—OK, just——

Mr. STANISLAUS [continuing]. A blowout. That is why we were there——

Mr. GIBBS. This all—I think this all goes back to what we are trying to do here with the Good Samaritan thing, you know. People that really are—have experience and expertise working to do that. And we need to get some protections, because obviously, they are not stepping up.

And now, my question on the Good Samaritan concept, would the EPA be supportive of partial—if you got a Good Samaritan who wants to come in there, if we change the law to make it so that it encourages them to do that, and they want to come in and do a partial remediation, but maybe not a total remediation, would—let's use an example.

Say you have a mine that is leaching, OK? And if they come in and do a partial remediation it is going to take care of that leaching process, but it might not take care of something further in the mine that might be—50 years away it might be another problem, but they just don't have the resources or capability to do that. Would the EPA be supportive of partial remediation?

Mr. STANISLAUS. Oh, absolutely. I mean under our existing guidance, partial cleanup is allowed, because, from our perspective and the Good Samaritan perspective, reducing the magnitude of risk is always a good thing.

Mr. GIBBS. OK. Well, I guess I used up my time. Go ahead.

Mrs. NAPOLITANO. Well, along the same line, if the Good Samaritan is going to come in for the purposes of being a Good Samaritan,

but if they are coming in to mine and leave a worse mess, what safeguards are there to be able to preclude that from happening?

Mr. STANISLAUS. Well, again, the Good Samaritan guidance is intended to be for a pure Good Samaritan.

Mrs. NAPOLITANO. Purely.

Mr. STANISLAUS. So meaning someone who is going there to address the risk from that site. If it is going to be mining, then there has got to be a separate process to deal with the mining situation and closure requirements and all of that. So it has to be done separately, if I understand your question.

Mrs. NAPOLITANO. Well, if we are going to allow the Good Samaritan to have an opportunity to go in and clean up, how are you going to build something separate to address anybody coming in, another mining company wanting to come in to reopen the mine, or be able to mine around the existing mine——

Mr. STANISLAUS. So——

Mrs. NAPOLITANO [continuing]. And create a problem for the future of leaching or leaking or being able to contaminate some of the streams and the rivers?

Mr. STANISLAUS. So just in terms of the Good Samaritan project itself, you would have an agreement and a workplan to deal with—it could be consolidation, it could be encapsulation. But if the entity were to separately do a mining operation, that would not be covered, and the protections would not be accorded for the mining activities.

Mrs. NAPOLITANO. How would you define Good Samaritan, then, somebody doing it out of their good will? Who is going to pay for it? Where is the Good Samaritan getting the funding to be able to go in and do that cleanup?

Mr. STANISLAUS. Well, a Good Samaritan—we identified factors in our—they have to be someone who is not responsible for that site, no affiliation with who was responsible for that mining site. OK? Did that answer your question?

Mrs. NAPOLITANO. Yes, but who is paying for that?

Mr. STANISLAUS. Well, the Good Samaritan would have to pay for that. That is why it is a relatively small project, as compared to some of the large projects that we have had, that EPA has had to step in with hundreds of millions of dollars.

Mrs. NAPOLITANO. Will this be defined in being able to determine how a Good Samaritan should act in cleaning up?

Mr. STANISLAUS. Yes. So the project would be defined, the activities would be defined——

Mrs. NAPOLITANO. Keeping it from making it worse is my point.

Mr. STANISLAUS. Yes. So the activities to lessen the risk and to consolidate, that would be defined as part of the agreement process.

Mrs. NAPOLITANO. It would allow them to do mining?

Mr. STANISLAUS. No.

Mrs. NAPOLITANO. Just the cleanup?

Mr. STANISLAUS. Just the cleanup.

Mrs. NAPOLITANO. And that is going to be defined?

Mr. STANISLAUS. Yes.

Mrs. NAPOLITANO. OK. Well, are any of these companies foreign-owned, that we can go back to their origin of being able to be the PRPs [potentially responsible parties]?

Mr. STANISLAUS. Oh, for the abandoned mines?

Mrs. NAPOLITANO. Yes, sir.

Mr. STANISLAUS. Again, when we get involved, we would first look at responsible parties. But again, some of these mines have been abandoned as much as 100 years ago. So, you know, it is very likely that those entities are not around.

Mrs. NAPOLITANO. Well, that is probably very true. Now there are a couple of other questions I had, and it has to do—and I think my colleague, the chairman, indicated about the contractors and their qualification. Since you may not have all the required mining engineers on staff, the contracts you have, you ensure that they are individuals who can deal—who have done it before, who will continue to be able to be responsible and reliable.

Mr. STANISLAUS. Well, that is exactly right. I mean EPA is not doing mining activities. We are not engineering the conduct of mining operations. What we are doing is doing cleanup. So we clearly have expertise in cleanup, be it a mining site, or any other chemical waste management site, we have that expertise.

Mrs. NAPOLITANO. Yes. But the EPA is only the cleanup. But isn't it also true that the Governor of the State should be able to allow that specific mine to go on Superfund, to be able to effectively put funding into it, taxpayer funds?

Mr. STANISLAUS. I am not sure I fully understand your question. I mean with respect to——

Mrs. NAPOLITANO. This is not on Superfund list. The gold mine was not on the Superfund list.

Mr. STANISLAUS. That is right. There has been conversations—it was not on the national priorities list for a long-term cleanup. That is right, yes. And so there are ongoing discussions with the Governor and the local stakeholders about their perspectives on whether it should be listed or not.

Mrs. NAPOLITANO. Well, we want to be sure—or at least I would hope that we would try to protect the taxpayer from having to end up cleaning up abandoned mines, when there might be possibility of being able to find the potential responsible parties, PRPs, and ensure that you have enough funding to be able to carry out the cleanup, but with the cooperation of not only the State and the mining interests.

Thank you, Mr. Chair.

Mr. GIBBS. Mr. Hardy?

Mr. HARDY. Thank you, Mr. Chairman. The Gold King Mine, was it private or was it a BLM——

Mr. STANISLAUS. It is a private site.

Mr. HARDY. Are you aware that, in Nevada, that almost—there's numbers of 85 percent of our State is federally owned?

Mr. STANISLAUS. OK.

Mr. HARDY. That is a fact.

Mr. STANISLAUS. OK.

Mr. HARDY. OK. With that being said, I am going to guess—I am going to guess—that there's close to 95 percent of all the mines are

on federally owned ground. Little befuddling to me that you don't know more about all this Federal ground in Nevada.

The reason I go down this avenue, you talk about that you have the expertise to be able to evaluate these cleanups. But without the mining expertise that you folks require mines, before they open, to have this mining engineer, this geological engineer, this archeological engineer, every kind of engineer under the—expert to be able to open that mine, who evaluates that mine before it opens, then, and approves it, if you don't have that expertise yourself?

Mr. STANISLAUS. Well, again, there—the agencies who are responsible for that is not EPA. So we have lots of other agencies in the Federal Government that has—that lead the questions about opening of mines.

Mr. HARDY. Then shouldn't we maybe have those other agencies involved in this new rule that we are trying to make it safe for these folks to be able to have these projects cleaned up, to make sure that they are doing the right thing the right way, instead of EPA taking the lead on this? Shouldn't that be some other direction?

Mr. STANISLAUS. Oh, I don't disagree.

Mr. HARDY. Shouldn't the EPA let somebody else take the lead on the Gold King Mine?

Mr. STANISLAUS. Yes. I mean, from a cleanup perspective, clearly, EPA has a role and just to clarify, EPA, working with the State and the State's experts, approached it from a cleanup perspective, and we brought to bear contractors with specific mining expertise.

With respect to the broader question of opening and closing mines, clearly there are other Federal agencies and State expertise that should take the lead on those issues.

Mr. HARDY. OK. And I just want to make it very clear before this committee and this panel here that the closing of a mine doesn't necessarily have to do with always cleaning up contaminants, because the majority of the mines in Nevada don't have any contamination. The majority of the mines in Nevada and other States in the West were—they are small tunnels, shafts. And a closure of that mine might have to do with just a concrete cap or a gate or a door, which—somebody over there made the statement, but that is adequate for most mines. Mines that have chemicals in them have a different process, and they have to do that under the approval of the EPA before they can even open of how their closure is going to go.

So why you are not following these issues kind of befuddles me. Why we are not having more responsibility, especially in the West, where 64 percent of all the West is held by the Federal Government, in making sure that these cleanups happen from the Superfund? And our own State, which—I sat on the State legislature. We fund a certain amount of dollars every year for the closure of mines, abandoned mines. So everybody has a stake in this thing.

But it is frustrating to me that—just want to make sure that, as we go down this road, that we make it safe, for those people that want to try to help and do things, that we protect them legally. And also that they understand the obligation of what is going on so when—if they do have a challenge, that we don't have another Gold King spill. So——

Mr. STANISLAUS. Sure. I mean I would agree for Good Samaritans to move forward we absolutely want to make sure that we address their liability concerns. So——

Mr. HARDY. And the Good Samaritans are probably some of our greatest assets out there. Well, let's let them do the work that they want to do, and help them do it the right way.

Mr. STANISLAUS. But I think, as you noted, the magnitude of the issue is pretty large. I think States have a fairly significant role, both in abandoned and new mines, and the Federal Government, so it is a comprehensive situation with the Good Samaritans playing a role as part of that.

Mr. HARDY. I guess the direction I would like to go back to with the situation in Nevada, it doesn't seem to appear you know much about Nevada, but wouldn't that evaluation of each State be more empowering to that State to understand—because Nevada has some of the same processes to protect—leave that power in the State of Nevada rather than one over—one eye, single eye, looking over the whole Nation, so to speak?

Mr. STANISLAUS. Well, absolutely. I mean I think that cleanup has to be led by the States. And not only the cleanup, but the management of it, which is the case. EPA is brought on board in situations from a complexity and cost perspective, as it was in this situation.

Mr. HARDY. And they should be compensated for that management, especially when it is Federal lands.

Mr. GIBBS. I want to follow up a little bit. I think I just heard you advocating for States to lead in this effort to clean up these abandoned mines.

Mr. STANISLAUS. Well, I think cleanup, generally, I mean, the States have a very——

Mr. GIBBS. Yes. Let me ask you this question. Acid mine drainage and all that, which is part of the abandoned mine issue, is there a U.S. EPA site where they have actually been successful in cleaning up an abandoned mine site, or has it most primarily been States doing it?

Mr. STANISLAUS. Well, I would say it is always—I mean sites like this and other sites, there is always a partnership with the States. And I can get back to you in terms of specific situations.

Mr. GIBBS. Yes. Also, get back to us with a detailed explanation of what experts are utilized in-house and contracted on these abandoned mine cleanups, so we can get our arms around what is really going on.

Just a final question. Would you give us recommendations of what should be done? Because we had this discussion earlier about the administrative tools. Obviously—I don't know if you concur with me, but the effectiveness isn't all that great, because only one Good Samaritan has actually stepped up, and they actually had to pull back, from my understanding. But what recommendations could you give us that we could do through legislation and otherwise to encourage volunteers, Good Samaritans to step up? Because I think there is a lot of willingness out there to do it. But what would be your recommendations? And maybe you might have to get back to us with that, but——

Mr. STANISLAUS. Yes, let me get back to you specifically. But this reminds me of a parallel situation, the contaminated sites generally in the brownfield area. You know? So while EPA provides some initial liability clarification, both the financial sector and the development sector needed additional outreach and comfort to enable underwriting processes to move forward.

So we did a lot of outreach to make sure that people understood that and actually did that. So I think maybe further outreach. So I will get back to you more specifically on the legal side.

Mr. GIBBS. OK.

Mr. STANISLAUS. OK.

Mr. GIBBS. OK. Thank you. Thank you for coming in today, and we will—I guess my ranking member has a quick question.

Mrs. NAPOLITANO. Yes, just to kind of clarify the gentleman's—Nevada has dry weather, so they have a very different mine situation as we do in California and other States.

And I certainly would want to ensure that the Good Samaritan is something that can move forward, because it is a necessity.

But we also need to know what kind of contamination some of these mines might have, because I can bring up Moab, Utah. It still needs about another billion dollars' worth of cleanup, and it has been on the cleaning page now for, I don't know, a couple decades. And it was leaching contaminations into the Colorado River, which, downstream, the rest of us drink. And how—what kind of contamination there might be, other than the contaminants of lead and silver and other things, whether it is—the severity of it.

And those are the things that we might want to hear, this panel to understand, in what areas we might start looking at prioritizing and be able to ensure that there's enough funds to be able to start looking at future blowouts. Does it make sense?

Mr. STANISLAUS. Yes.

Mrs. NAPOLITANO. OK. Thank you, Mr. Chair.

Mr. GIBBS. Thank you for coming in, Mr. Stanislaus, and we will just take a minute break here while the next panel gets situated.

[Pause.]

Mr. GIBBS. Well, welcome, panel 2. Hopefully, some more Members will show up. But thank you for sitting through the first panel.

On panel 2 we have Mr. Cavazza. He is the director of the Bureau of Abandoned Mine Reclamation, Pennsylvania Department of Environmental Protection. He is speaking on behalf of the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs.

We have Mr. Luke Russell. He is vice president of external affairs, Hecla Mining Company, on behalf of the National Mining Association.

Mr. Doug Young is senior policy director of Keystone Policy Center.

Mr. Chris Wood, president and CEO of Trout Unlimited, and Ms. Lauren Pagel, policy director of Earthworks; welcome.

And, Mr. Cavazza, go ahead. Welcome, and the floor is yours.

TESTIMONY OF ERIC E. CAVAZZA, P.E., DIRECTOR, BUREAU OF ABANDONED MINE RECLAMATION, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, ON BEHALF OF THE INTERSTATE MINING COMPACT COMMISSION AND THE NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS; LUKE RUSSELL, VICE PRESIDENT OF EXTERNAL AFFAIRS, HECLA MINING COMPANY, ON BEHALF OF THE NATIONAL MINING ASSOCIATION; DOUG YOUNG, SENIOR POLICY DIRECTOR, KEYSTONE POLICY CENTER; CHRIS WOOD, PRESIDENT AND CEO, TROUT UNLIMITED; AND LAUREN PAGEL, POLICY DIRECTOR, EARTHWORKS

Mr. CAVAZZA. OK. Good morning, Mr. Chairman. My name is Eric Cavazza, and I am the director of Pennsylvania's abandoned mine land program, and I am the outgoing president of the National Association of Abandoned Mine Land Programs. I am appearing here today on behalf of the Association and the Interstate Mining Compact Commission. We appreciate the opportunity to address the important issue of abandoned mine lands and the potential for a Good Samaritan program.

There are a myriad of reasons why a Federal Good Samaritan program is needed, but the most important is to remove the potential for incurring liability under Federal environmental protection statutes, such as the Clean Water Act. These liabilities deter motivated, well-intentioned volunteers from undertaking projects to clean up or improve abandoned sites, thereby prolonging the harm to the environment and to the health and welfare of our citizens. The universe of abandoned mine lands is so large, and the existing governmental resources so limited that, without the assistance of Good Samaritan volunteers, it will be impossible to clean up all of these lands.

We commend you and your colleagues for continuing efforts in pursing Good Samaritan protections. Despite the extraordinary dedication of those involved in the AML arena, there remains a substantial amount of work to be done. This is not due to a lack of will, but primarily to insufficient funding. Our efforts need a substantial boost, and the potential Good Samaritan solution before the subcommittee today will propel us toward our goal.

We have seen the remarkable results from the Good Samaritan approach in States such as mine, which enacted its own Good Samaritan law to provide protections and immunities related to State clean water requirements. Over 50 Good Samaritan projects have been completed to date, and participants have included local governments, individuals, watershed associations, corporations, municipal authorities, and conservancies.

I would now like to discuss two specific examples of water treatment projects in Pennsylvania, one of which was successful and another that was never implemented as a result of liability concerns.

Over the last 15 years, many partners worked to restore water quality and reclaim abandoned mine lands in the Indian Creek watershed in southwestern Pennsylvania. Indian Creek is an important tributary which eventually flows into the Ohio River in downtown Pittsburgh. An assessment of the watershed revealed that drainage from abandoned mines was the biggest source of impairment, degrading the quality of 17.4 miles of Indian Creek and its

tributaries. A watershed restoration plan was developed to address the most severe discharges and restore water quality.

Since that time, six passive mine drainage treatment systems have been constructed, some on private property. The private landowners and the watershed association were both extremely concerned about liability. The parties applied for and received approval for Pennsylvania Good Samaritan protections. Without this protection, this project would likely never have been completed. As a result of remediation work, the stream has made a dramatic recovery, and now supports a healthy fish community and is a source of community pride.

The Gladden discharge was a similar story with a different outcome. The discharge dumps an average of about 900 gallons per minute of iron-laden water into Millers Run, a tributary to Chartiers Creek and the Ohio River. Within one-half mile, Millers Run changes from a clear stream with trout to an orange stream with virtually no life. Two local conservation groups worked with the Pennsylvania AML program and several other Government agencies, private landowners, and businesses for over a decade to develop and implement a plan to treat the Gladden discharge and restore Lower Chartiers Creek.

In 2009 a private business approached the group with a concept to construct a treatment facility for the discharge, and to establish a long-term O&M [operation and maintenance] trust fund for the facility in exchange for the right to use some of the treated water. Both the private landowner and the private business were happy to learn of our environmental Good Samaritan Act and the protections it afforded, but were disappointed to learn that no equivalent such law existed to protect them from third-party lawsuits and liability under the Federal Clean Water Act.

After further review, both the private landowner and the private business withdrew from the project. No subsequent treatment plan has been implemented for the discharge, and it continues to spew AMD [acid mine drainage] into the stream today.

Over the course of the past 15 years, several bills have been introduced in the U.S. Congress to enhance the cleanup of inactive and abandoned mines by emulating the Pennsylvania Good Samaritan program. From the State's perspective we have several recommendations that we believe should be considered in any Good Samaritan legislative effort, and these recommendations are discussed in our written statement.

Mr. Chairman, the legacy of abandoned mine lands still looms large in many of our Nation's communities. It is time for Congress to act to enable Good Samaritans to help conquer the monumental task of cleaning up our abandoned mine lands. Thank you for the opportunity to testify.

Mr. GIBBS. Now, Mr. Russell, welcome. The floor is yours.

Mr. RUSSELL. Thank you, Mr. Chairman, Ranking Member. My name is Luke Russell. I am vice president of external affairs with Hecla Mining Company. I have been involved in environmental compliance, reclamation, and remediation of mine sites for over 30 years, including time worked as remediation manager with the State of Idaho at the Coeur d'Alene Basin Superfund site in northern Idaho.

Hecla Mining Company is the oldest precious metals mining company in North America, and the United States largest primary silver producer. Today I am testifying on behalf of the National Mining Association, who represents the miners, vendors, and suppliers of America's mining industry. National Mining and its member companies have long been interested in promoting the voluntary cleanup of legacy mines through the development of Good Samaritan legislation.

When we speak about abandoned mines, it is important to note that we are talking about sites with no viable owner that were created due to mining practices of 100 to 150 years ago, well before the enactment of modern environmental laws, regulations, and reclamation requirements. We are not talking about mines of today.

Today's operators must provide financial assurance to guarantee their sites will be properly reclaimed, and billions of dollars have been posted with the State and Federal Governments for exactly this purpose. Thus, the abandoned mine land problem is a finite and historical problem, not one that will grow in the future.

Industry wants to see legacy sites reclaimed, and safety and environmental conditions improved as much as anyone. After all, they are incorrectly portrayed as being our dirty pictures, when, in fact, they represent results of historic practices. The mining industry has the desire, the experience, the equipment, and the technology to mitigate and reclaim abandoned mine lands.

Any Good Samaritan faces the risk of perpetual liability under provisions of the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA. For example, under the Clean Water Act, 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 originally caused the adverse water quality. Consequently, remediation measures that could result in incremental and, in some cases, significant water quality improvements are not undertaken for fear of the resulting liability.

Furthermore, a Good Samaritan who begins to clean up, or even just investigates an abandoned mine site, runs the risk of becoming an operator under CERCLA. CERCLA liability is joint, several, strict, and retroactive. Such potential liability is chilling to any voluntary cleanup effort.

If a goal of Good Samaritan legislation is to improve water quality, the environment, and public safety, then such legislation must encourage cleanups by reducing the legal impediments. To remove the legal barriers discussed previously, regulators should be given discretion to adjust environmental requirements, standards, and liabilities for Good Samaritan projects. Mining companies should be allowed to qualify as Good Samaritans. Mining companies that did not create the identified environmental problems at a legacy site should be allowed to qualify.

EPA or States must permit Good Samaritan projects. Projects should be authorized on a site-by-site basis, with discretion to allow important environmental improvements that may fall short of addressing all contaminants at a site, so long as they are—a net improvement is achieved.

Good Samaritan legislation should also allow remedial actions that include the reuse or reprocessing of materials from legacy sites. At some abandoned mine sites the best way to partially or wholly remediate the environment may be to collect the various materials located at the site, utilize them in construction of a new mining operation, or process those materials to remove any valuable minerals, and then to dispose of those wastes in an environmentally sound manner. Such projects would be subject to appropriate Federal or State assessment and approval through a Good Samaritan permit program.

Protecting the public interest and ensuring more effective and efficient cleanup of legacy sites created in the distant past is possible, and should include Good Samaritan legislation that embodies the elements discussed above. The mining industry stands ready to be a part of this solution.

Thank you for the opportunity to testify here today.

Mr. GIBBS. Thank you.

Mr. Young, welcome, the floor is yours.

Mr. YOUNG. Mr. Chairman, Representative Napolitano, thank you very much for inviting me here to be at this panel, and also for actually holding this discussion. My name is Doug Young. I am a senior policy director at the Keystone Policy Center that is headquartered in Keystone, Colorado.

And my name is Young, but I am not young to this topic. I actually have been working on this particular specific topic for 20 years. I started out working on it in the Western Governors' Association as staff counsel for Governor Roy Romer, then worked for 12 years with then-Representative—and later Senator—Mark Udall on this very topic. So I was the lead staffer for him on the various pieces of legislation that he had introduced on this very topic.

And this is a mixed blessing for me because it is unfortunate that we are still talking about it, and it is unfortunate that a spill like the Gold King spill precipitates a need for this discussion. But I am glad it is happening, and I am glad we are continuing to have the conversation. The unfortunate part about it is that I wish we had fixed this a long time ago.

To give you a little flavor of the difficulty—you have heard some of it here today, your questions have been very, very good, because they have hit on the topics that we have been experiencing on this particular issue over the 20 years I have worked on it.

In my experience, we gathered together various disparate interests, just the whole range of folks who are interested in solving this over the 20-year period that I worked on specific legislation. And we all wrestled with the very topics that you have raised and that have been raised in this very hearing.

We brought together the States, the EPA, the mining industry, the environmental community, anybody who would have an interest in this. And we haggled over all of the topics you have raised. And the focus that we did at the time was over the Clean Water Act, specifically. The efforts back then were to try to come up with a new permit, a brand-new permit program under EPA so that—or, excuse me, under the Clean Water Act, so that it would deal with the discharging issues.

I should tell you that there are plenty of Good Samaritans. You have heard today that the people are actually doing work at these sites. What hampers them is the discharge problem. So they are doing good work and resolving safety issues, other kinds of issues that exist at these sites, but it is the draining, ongoing, perpetual, forever releases that are hampering, the big stumbling block, which is why we focused on the Clean Water Act liability question.

I will quickly say that the—and we—the problem is we couldn't get—we got consensus on some of these topics and we wrestled with the remaining question, the standards to apply, who could be a Good Samaritan, how to deal with sites on Federal property versus non-Federal property, how to include the tribes. We dealt with all of that. So—but the trouble is we tried to thread the needle on getting consensus on that, but we never got complete agreement, where everybody would come to the table in front of a hearing, like in front of all of you, and say, "We support this program."

So I worry that we are going to go back over old ground in using the Clean Water Act as the mechanism. I personally believe that we now are at a place where we can look at this anew, and look at other programs that we could tack on to or make some refinements to, instead of the Clean Water Act, being specifically CERCLA as a potential, brownfields as a potential.

And what you can do, I think, is that you can make amendments to those statutes, where you capture the concern of all of the issues, but specifically related to discharging releases, and not have to go back over the old ground of coming up with a whole new permit program within the Clean Water Act. That still is a potential avenue, I think, so I don't want to discount that. But we are going to end up having to go through—we will still go through those same issues and still try to refine them and get consensus around them.

But the big concern I have is that the Clean Water Act is a very special act, it is a very important one, and I know there are concerns from some folks about opening it up. And I believe that you can deal with the discharge issue, the ongoing discharge issue, without having to actually amend the Clean Water Act, and do it through other authorities, like CERCLA.

So I just—I am just saying that I think we ought to be able to use this opportunity to get at the very issues you have raised—I am not suggesting those same issues don't need to be wrestled with again, they do. But there might be a way we can address some of the other issues that have stymied this through other mechanisms, so we do not end up facing those roadblocks again under this new thinking, and try again.

Thank you very much, Mr. Chairman.

Mr. GIBBS. Thank you. Mr. Wood, welcome.

Mr. WOOD. Chairman Gibbs, Ranking Member Napolitano, thank you for having me here today. My name is Chris Wood, and I am the president and CEO of Trout Unlimited. I want to offer the following testimony on behalf of TU and our 155,000 members. And my testimony will focus on the cleanup of abandoned mine lands, specifically the need to facilitate more abandoned mine cleanups by Good Samaritans—namely, those who don't have a legal obligation to take on such work, but do it just to improve water quality.

Our mission is to conserve, protect, and restore North America's coldwater fisheries and the watersheds that they depend on. In pursuit of that mission, we have worked to restore streams and rivers that have been damaged by abandoned mines from the coal fields of Appalachia to the Rocky Mountain West, and many places in between.

If you could, move the first slide.

[Slide]

Mr. WOOD. By now, this image is familiar to everyone. The 3-million-gallon spill in August of polluted water from the Gold King Mine near Silverton drew national media attention.

The next slide, please.

[Slide]

Mr. WOOD. But less well-known is the fact that there are thousands of similar, smaller scale abandoned mines that flow through people's backyards all around—all across America. The lesson from Gold King is not so much that an EPA contractor screwed up, as it is that we need to have a much greater sense of urgency about addressing the problem of pollution from abandoned mines all over the Nation.

Abandoned hardrock mines affect about 40 percent of the headwater streams in the Western United States. This is particularly important for us, because that happens to be where all the native trout are holed up. The lack of a dedicated funding source, and the burdensome liability risk for would-be Good Samaritans stalls efforts to clean up these abandoned mines.

In the East we have pollution from abandoned coal mines that damages over 10,000 miles of streams in Pennsylvania and West Virginia alone. The East, however, should actually consider itself fortunate, because the production of coal is taxed in this country, and part of that funding supports an abandoned mine land fund. Since 1977, more than $8 billion has been put to good use on the ground, cleaning up abandoned coal mines and making them safer in Appalachia. Unfortunately, no similar fund exists to clean up the legacy of hardrock mining, particularly in the Western United States.

In Pennsylvania, as was mentioned earlier, aided by a State-based Good Samaritan policy, TU is working with State agencies, watershed groups, and other partners to conduct more than 250 abandoned coal mine pollution abatement projects.

If you could show slide 3, please.

[Slide]

Mr. WOOD. In places such as Kerber Creek, Colorado, pictured here, TU and its partners have restored over 80 acres of mine tailings, improved 8 miles of stream, and installed over 340 in-stream structures that are now home to naturally reproducing wild trout. Volunteers logged over 13,000 hours of work in the watershed over the past few years alone, and the project has received awards from the BLM, the State of Colorado, the Forest Service, and the Public Lands Foundation.

Notwithstanding what happened at Gold King, we know how to clean up abandoned mines in the East and the West. Two things would dramatically accelerate the scope and scale of our efforts to

make our water cleaner and our rivers more fishable and swimmable.

First, as is the case with coal, a dedicated funding source is needed for cleaning up abandoned hardrock mines. Almost every commodity developed off public lands—coal, wood fiber, oil, gas, and forage—all have dedicated funding for restoration and mitigation. The only commodity that lacks such a dedicated fund is hardrock minerals. That needs to change.

Second, local communities, private interests, and groups such as TU need protection from the liability associated with cleaning up abandoned mines. The Clean Water Act and CERCLA have been tremendously effective at cleaning up our rivers and holding polluters accountable for their actions. They do not, however, lend themselves to permitting cleaning up abandoned mines. My written testimony provides recommendations for tailored changes that we think would fix the problem.

We strongly urge you to work together to introduce and develop a strong bipartisan bill to help us clean up abandoned mines, and we stand ready to work with Congress to get such a bill through Congress, so that affected communities around the country will once again have clean and fishable waters.

Thank you for the opportunity to testify today.

Mr. GIBBS. Thank you. Mr. Pagel, welcome.

Ms. PAGEL. Thank you, Chairman Gibbs, Ranking Member Napolitano, and members of the subcommittee, for the opportunity to speak to you today about reclaiming abandoned hardrock mines and Good Samaritan policies. My name is Lauren Pagel, I am the policy director for Earthworks.

For over a quarter century, Earthworks has worked closely with a broad coalition of local governments, Native Americans, citizens groups, and other conservation organizations to improve the policies governing hardrock mining, including abandoned mine reclamation. As the orange rivers in Colorado—both from the Gold King Mine spill and the recent acid mine drainage into the Uncompahgre River illustrate, we have a problem with pollution from inactive and old hardrock mines in this country. This pollution harms Western waters and the communities that rely on them for recreation, tourism, and drinking water.

These orange rivers are stark reminders, but do not adequately represent the hundreds of thousands of abandoned mines that litter the West, polluting water in more subtle yet no less destructive ways. We have the solution to the problem of perpetual pollution from inactive and abandoned hardrock mines. We must reform the 1872 mining law and institute a reclamation fee similar to the one paid by the coal industry in order to stop the next mine disaster before it happens. If the hardrock mining industry had been subject to a reclamation fee, the Gold King Mine spill likely would never have happened.

Good Samaritan initiatives that don't include a dedicated and significant funding source won't solve the problem facing Western communities and water resources. The EPA has created a process, which you heard about earlier, through which qualified projects can receive what is effectively a Good Samaritan permit. Applicants receive an administrative order from the EPA to become Good Sa-

maritans and earn liability relief from CERCLA and the Clean Water Act.

Earthworks supports this process, and we have supported several legislative proposals in past Congresses that create a narrow exemption from the Clean Water Act for truly Good Samaritans.

The pollution from many abandoned mines persists despite well-intentioned efforts by Good Samaritans to clean up these mines, and the reason is lack of funding. There are many other ticking time bombs like the Gold King Mine, messy, complicated, incredibly expensive to clean up, that cannot be solved by Good Samaritans alone. According to the EPA, estimated cleanup costs for abandoned hardrock mines totals approximately $50 billion. This is a large-scale problem, and it requires a large-scale solution, which comes in the form of a reclamation fee.

Cleaning up abandoned mines can be a win-win for our economy and for clean water. According to data from the State of Montana Abandoned Mine Reclamation Fund, each million dollars spent on cleanup creates 81 jobs. In addition to job creation, these restoration activities put degraded lands into productive use and grant relief to communities that are currently shackled with excessive costs for water treatment.

The Obama administration has proposed a reclamation fee on all hardrock mining, similar to what the coal mining industry pays. This fee would generate an estimated $180 million per year to fund abandoned mine reclamation, and that would create an estimated 14,000 jobs for those in the mining industry.

Congressmen DeFazio, Grijalva, Lowenthal, and others have introduced legislation that would bring us closer to ensuring that the Gold King Mine disaster does not happen again. H.R. 963, the Hardrock Mining Reform and Reclamation Act, would facilitate the cleanup of abandoned hardrock mines, while creating tens of thousands of reclamation jobs across the West, far into the future. This bill modernizes the antiquated 1872 mining law by balancing mining with other uses of public lands, while ensuring a fair royalty to the taxpayer and creating a reclamation fee.

Thank you for the opportunity to present the views of Earthworks on this important topic, and we look forward to working with the committee to address the real problem of abandoned mines—that abandoned mines pose to water and public safety in the West.

Mr. GIBBS. Thank you. I will start out. Mr. Russell, thanks for all of your testimony, it is all great and helpful. But, Mr. Russell, you talk about mining companies needing to qualify for Good Samaritan works, OK? And I would agree with that, because that is where the expertise is, and I think we had discussion on the first panel about questioning the expertise of that panel.

I guess my first question is what issues are you facing that you haven't been able to qualify? And then also, would remining an abandoned site—is that an issue? Because we are talking about how we need more resources.

Now, it seems to me one of the ways that we get resources, if some of these abandoned mines can be reopened when they are reclaimed and—or maybe areas in the mine can be remined. You are the expert, you would have to tell me. But I will just give you an

example. I know in the oil and gas fields, you know, we have got wells that were put in in the 1920s and 1930s and now we have seen—until the price dropped, anyways—coming back in with a new technology, they can strip those walls and get oil and gas they couldn't get, you know, 50, 60 years ago. It is the technology.

So with improved technology, remining efforts, is this one way to go? And if so, what are the regulatory challenges to be able to get there? As you say, mining companies need to be qualified.

Mr. RUSSELL. Certainly, Mr. Chairman. Let me give you an example. I worked at a mine that—it was first mined in the late 1860s, the competing mining camps were called Leesburg and Grantsville on the heels of the U.S. Civil War. One hundred years later, I was there permitting a new mine, new technology, able to come back into that same area and mine again.

The historic mining had left placer sediments in the downstream area. As a part of the modern mine, we were able to come in, clean that material up, use some of that material as part of the construction, so it was a win-win for the environment, a win for us. So we did not reprocess that material, but we were able to utilize it as construction material.

So, yes, there is great opportunity. And, as testified earlier, that under a Good Samaritan program there would be a bright line between what would be that type of remediation and cleanup and what would be a renewed mining operation. That renewed mining operation would be subject to all State and Federal permitting. It would be required to post a financial assurance, which would be different than that first piece, which could be remediation——

Mr. GIBBS. Now, are you seeing roadblocks put up by the regulatory agencies to do that? What have your challenges been?

Mr. RUSSELL. Sir, the biggest challenge was mentioned earlier. If there is a discharge, the wheels fall off. The liability, potential liability of having to be responsible for that in perpetuity essentially is a chilling——

Mr. GIBBS. So, essentially, you are buying the liability that was from 100 years ago.

Mr. RUSSELL. Exactly right.

Mr. GIBBS. And so they call that a tail. You know, it goes on forever.

Mr. RUSSELL. It is a long tail.

Mr. GIBBS. A long tail. OK. Mr. Young, you talked about not doing this through the CWA [Clean Water Act], but maybe brownfields or Superfund. Can you just expound on it a little bit more?

Mr. YOUNG. Sure, most certainly. I was going to just make a real quick observation on remining, if it is OK.

Mr. GIBBS. Yes.

Mr. YOUNG. We did deal with this quite a bit, historically, including in previous legislation that would use the Clean Water Act permit. One way we worked this through was that any remining that occurred—I mean the effort has to be to clean up the site. So it is not—the purpose of remining would not be to actually remine and develop the resource. The purpose would be to do the cleanup. And, as you are doing that cleanup, if you run across recoverable assets, minerals, you can develop those.

But the way we did it was that any of the revenue that you received for that mineral, recovered mineral, would have to be plowed back into the site itself you are cleaning up, or future abandoned mine sites. So that was—I just throw that out there as a solution, as a potential thing to look at, because that is the way we dealt with that.

I will say, though, again, that I think I am a little concerned that if we go back to the Clean Water Act and try to establish a new permit program, we are going to go through these same debates and issues again. That, again, can be a good or bad thing. But it——

Mr. GIBBS. Well, let me just——

Mr. YOUNG. Go ahead.

Mr. GIBBS. That takes us back to, I think, what Mr. Stanislaus was talking about. They did this administrative stuff in, I think, 2007 and 2012, and I was arguing—trying to debate—about that. It must not be effective, because only one entity took it up, and I don't think they were successful.

So you know, I guess the question is whether the administrative action the U.S. EPA has taken is or is not working. You would concur with that, right?

Mr. YOUNG. I would agree. I will, though—I will applaud the EPA for doing that. I think it is primarily, from my perspective, focused on the CERCLA aspects of cleaning it up. There is already a CERCLA Good Samaritan provision under the CERCLA statute.

The question becomes when you have got a release after a CERCLA removal action is complete, and you have got an ongoing release. You are still subject to citizen lawsuit provisions. In other words, there still has to be some statutory fixes that would give legal assurances, real assurances, to Good Samaritans.

Again, I think the EPA program is great. But if I were an attorney advising a Good Samaritan under that EPA administrative program, I would tell them you are still——

Mr. GIBBS. Because it doesn't protect you from third-party lawsuits.

Mr. YOUNG. Correct.

Mr. GIBBS. So that is a big issue.

Mr. YOUNG. Correct.

Mr. GIBBS. Mr. Cavazza, I know Pennsylvania has done really well in cleaning up and really, I guess, has a Good Samaritan law, State law. Correct? I guess it has been successful. But, you know, what is the conflict with Federal law? I mean, when an entity is coming in to do a cleanup, they get protection under State law for State lawsuits or third-party lawsuits, but they have no protection if it is taken to a Federal court. What have been the issues there for you?

Mr. CAVAZZA. Yes. You are correct. The Pennsylvania Good Samaritan Environmental Good Samaritan Act protects Good Samaritans, people cleaning up these sites, from all State and clean water liability. However, there is no protection under the Federal laws, primarily the Clean Water Act and also potentially under CERCLA. And, in my time in Pennsylvania, we have worked with a lot of partners on projects that I think would have had significant improvement in cleaning up abandoned mine sites and abandoned

mine drainage. However, that fear of that Federal liability has caused some of the partners to walk away from the project.

Mr. GIBBS. So it is very challenging. OK. I will turn it over to——

Mrs. NAPOLITANO. Thank you, Mr. Chairman. On a yes or no answer, please, because I have other questions I would like to get to the panel, one of the lessons learned from the Gold King Mine is that, despite the best intentions of the parties, cleanup attempts can fail, and can have significant consequences to downstream communities. However, I understand the Good Samaritan concept.

The costs of such failure at a Good Samaritan site are not all borne by the Good Samaritan, but are passed along to others, including the taxpayers. If we ultimately really want to solve the problem of abandoned hardrock mines, would you agree that concepts of these Good Samaritan cleanups and a dedicated fund for hardrock mine cleanup are inseparably bound together? Yes or no. Panel?

Mr. RUSSELL. Yes.

Mrs. NAPOLITANO. Yes.

Mr. CAVAZZA. My microphone is not working. Yes. I would say yes.

Mrs. NAPOLITANO. Yes, OK.

Mr. YOUNG. Yes.

Mr. WOOD. Yes.

Ms. PAGEL. Yes.

Mrs. NAPOLITANO. Thank you. And to Mr. Cavazza, does the National Association of Abandoned Mine Land Programs or the States have an inventory of abandoned mine sites? And who do they share it with? And what does the information contain?

Mr. CAVAZZA. Well, there is a—there are inventories, partial inventories of hardrock sites. They are not maintained by the National Association of Abandoned Mine Land Programs. They are maintained by individual States and some of the Federal agencies that—Bureau of Land Management, U.S. Forest Service, National Park Service, they have partial inventories.

The Federal Office of Surface Mining Reclamation and Enforcement, who administers all the abandoned mine land programs for coal across the country, does maintain a national inventory of abandoned coal sites. It is known as AMLIS, Abandoned Mine Land Inventory System. It is—just like the hardrock inventories, it is not 100 percent complete and comprehensive. It does not identify every mine—coal mine site and the problems associated with them across the country.

However, most of the highest priority sites have been captured there. And I think the State inventories of hardrock sites, along with the Federal agency hardrock inventories, have identified a significant number of high-priority sites. And probably the effort to try to make the inventories 100 percent complete and comprehensive may not be worth the cost and effort to do so because the magnitude of the problem is so great, and the number of sites we have already identified that are of priority is already very large, that any money that we would be able to allocate toward the problem would probably best be spent on the high-priority sites we have already identified.

Mrs. NAPOLITANO. Are you saying that all the high-priority—that every one of them that should be looked at is a high priority? In other words you have identified the high priority. The ones that you have not identified would not qualify to be prioritized?

Mr. CAVAZZA. No, I do think some of the mine sites that are not included on any of the inventories, whether they be coal or hardrock, would be high-priority sites. But I think that would be a minority of the unidentified sites. I think most of the high-priority sites have been identified and are already on an inventory. There just is not a comprehensive national inventory of those sites.

Mrs. NAPOLITANO. And why is that?

Mr. CAVAZZA. I think there are a number of factors. I think the cost and difficulty of creating such an inventory has been a deterrent to having that be completed. Many of these sites are very remote. Many of them were mined several hundred years ago, so there aren't very good records to even locate them. It takes a lot of field reconnaissance or some type of remote sensing to find these sites.

And then, the problems associated with them are—can be very diverse. There can be mine subsidence issues, water problems, and those are all very difficult to quantify and put a cost to.

Mrs. NAPOLITANO. Well, I would hope that maybe the Conference of Mayors or other organizations would start looking at what is in the backyard in order to prevent any kind of impact they might have on their environment and on their fishing and other tourism—tourist impacts.

Mr. Wood, your testimony suggests that you believe Good Samaritan protections should only be extended to Good Samaritans, not companies or communities.

Mr. WOOD. I am sorry, did you say do I believe that?

Mrs. NAPOLITANO. Yes. Why?

Mr. WOOD. I——

Mrs. NAPOLITANO. It suggests that you believe that it only be extended to them. Why?

Mr. WOOD. I don't believe that. I think Good Samaritan protections should apply to anyone that doesn't have a historic legal interest in the pollution. So we work very close—mining companies are some of the best restoration practitioners out there when it comes to cleaning up abandoned mines. And so long as they don't have an historic legal connection to the abandoned mine site, I think we should be encouraging them to get involved.

Mrs. NAPOLITANO. But who would make that determination?

Mr. WOOD. Who would make the——

Mrs. NAPOLITANO. That there is no inherent conflict.

Mr. WOOD. Well, I mean, it should be fairly easy to determine if an abandoned mine was at one point owned by the company that is—now owns it.

Mrs. NAPOLITANO. OK. One of the concerns I might have is whether or not some of the folks who might want to remine a mine—not necessarily the one who originally mined it—that they may be doing it for profit and leave a worse situation than was there before.

Mr. WOOD. No, but I think Mr. Russell put it well. I mean, you know, there is going to be areas where you can remine for the sake

of processing materials. They should go through the full Federal permitting process for that kind of a project. But for other areas, where they are truly acting as a Good Samaritan—meaning that there is a neighboring property that they don't even own that they can do some good work on and help make things better—by all means I think we should encourage that.

Mrs. NAPOLITANO. But asking Good Samaritans to clean up the old mines either through administrative process or via legislation will not—and cannot—fully address the hundreds of thousands of old mines that currently threaten our safety and clean water. Why?

Mr. WOOD. I am sorry. Say that one more time.

Mrs. NAPOLITANO. Well, Ms. Pagel, this is for Ms.—this is asking the Good Samaritans to clean up old mines. It will not fully address the hundreds of thousands of mines that are currently threatening our waters and our safety.

Ms. PAGEL. Yes, Good Samaritans have a role to play in cleaning up abandoned mines. But without an adequate funding source, you are only going to have a small number of mines that are cleaned up. And so, if we really want to address the full scope of the problem, we need a dedicated funding source, we need a hardrock abandoned mine reclamation program that can be used by States, local governments, et cetera, to clean up those sites.

Mrs. NAPOLITANO. Would this dedicated fund be able to help move the programs forward faster?

Ms. PAGEL. Yes.

Mrs. NAPOLITANO. Include more?

Ms. PAGEL. Yes.

Mrs. NAPOLITANO. And where would that funding come from?

Ms. PAGEL. The funding would come from a reclamation fee charged on the hardrock mining industry, similar to what the coal mining industry has paid since the late 1970s.

Mrs. NAPOLITANO. OK. Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Rokita?

Mr. ROKITA. Thank you, Mr. Chairman. I appreciate you organizing us this morning, and I appreciate the witnesses' testimony so far. My apologies for being late. I was, ironically, at another hearing discussing coal mines, et cetera. So I appreciate everyone's leadership in their field.

Ms.—is it Pagel or Pagel, I am sorry.

Ms. PAGEL. Pagel.

Mr. ROKITA. Pagel. Thank you. So I understand—and I will probably have to zoom out a little bit from the detail that you are probably used to, but would Good Samaritan projects improve the environment or not? Should we encourage Good Samaritans to perform cleanups at mine sites?

Ms. PAGEL. We should. And I would hope we could also get Good Samaritans additional funding from a reclamation fund to do those cleanups.

Mr. ROKITA. At the end of the day, funds are not—would you prefer having no cleanup be performed at an abandoned mine site, or having a Good Samaritan perform a cleanup?

Ms. PAGEL. A Good Samaritan. I mean we have supported Good Samaritan cleanups in the past, and we continue to encourage Good Samaritans to clean up any sites they are able to.

Mr. ROKITA. Your remarks about reclamation fees and royalty payments focus on issues that, if I understand the jurisdiction correctly, are not part of this committee's jurisdiction and, further, do not address the ongoing liability concerns that innocent parties, including States and local government, face if they want to clean up a mine site, large or small.

So, do you believe that the fear of exposure to strict liability under Federal laws is causing many potential parties to shy away from performing the cleanup activities?

Ms. PAGEL. I think that the lack of funding and potential legal liability issues are causing Good Samaritans and others to shy away. I do note there are jurisdictional issues. But I think that the reclamation fee and the Good Samaritan issue are inextricably linked, and I think that there is agreement on that issue.

Mr. ROKITA. So your organization is on record that we need to address these liability concerns?

Ms. PAGEL. Yes.

Mr. ROKITA. All right. OK. Anyone else want to comment on the line of questioning I just gave to Ms. Pagel? Mr. Young?

Mr. YOUNG. I would observe that in the first bill I worked on with Representative Udall at the time, we had a Good Samaritan permit provision in the Clean Water Act, and we also had a funding source included. It was two titles. And the funding provision became so controversial that we ended up having to split that out. The funding——

Mr. ROKITA. Controversial because people around here fought on turf lines?

Mr. YOUNG. It was——

Mr. ROKITA. Or was it a tax issue?

Mr. YOUNG. Taxing issue, ideological, political. I will tell you that the provision that we had was we borrowed the fee structure that Nevada currently has. Nevada has a fee system for mining currently, and we just picked that up and borrowed it and used it and we proposed it as a Federal fee-type system.

So—but we—I worry that, if we deal with that specifically—I know it is not the committee's jurisdiction, but I worry—I agree with every panelist who has said that this is a major funding issue. I just think there is a way we can do this without having to directly assess a fee or a royalty, in that if you incentive more Good Samaritans, they bring their resources to the table.

If the mining industry was a Good Samaritan and didn't have to worry about the liability questions, they would bring their resources to the table. Not just the mining industry, but the States are ready, willing, and able to be Good Samaritans, as well. The States themselves are thwarted because of this long-term liability, perpetual liability question. So the more that we can establish this program and have it working, the more I think we can attract those resources without having to deal with the political headwind of doing a fee or a royalty. That is my opinion.

Mr. ROKITA. And do you have a model State program in this area?

Mr. YOUNG. For?

Mr. ROKITA. Good Samaritans or other programs, or anything like that?

Mr. YOUNG. Well, there are Good Samaritans that are doing work as long as they don't touch the draining water. So there are Good Samaritans doing work out there right now, but they are just not touching the water, the draining water, the acid mine drainage.

Mr. ROKITA. Anyone else? Yes, Mr.—they always do this to me. Staff brings witnesses in whose names I can't pronounce.

Mr. CAVAZZA. Cavazza.

Mr. ROKITA. Thank you.

Mr. CAVAZZA. In Pennsylvania we have dozens of watershed groups who I will call Good Samaritans for purpose of this quick response. And they have undertaken dozens of restoration projects at abandoned mine sites across the State of Pennsylvania. And most of those cleanups were not done to Federal Clean Water Act standards. However, they addressed a significant portion of the pollution that came from these mine sites, and they have made significant improvements in water quality, such that many streams that were dead now support healthy, aquatic life populations and fish populations.

And, you know, Pennsylvania does have a State Good Samaritan program, and I think many of the features of that program could serve to help develop a Federal—a similar program at the Federal level.

Mr. ROKITA. Let me quickly ask—my time has already expired, but such is the tradition of this committee to go just a little bit over.

I want the record to reflect Mr. Young was talking about the fact that even mine operators could be Good Samaritans if there were significant liability protections. Let the record reflect that the questioner, Mr. Rokita, was nodding his head in affirmation of that. Is there anyone who disagrees with that concept on the panel? Anyone on the panel who disagrees?

[No response.]

Mr. ROKITA. And let the record reflect that no—that all of the panelists are nodding their head negatively, meaning they don't disagree.

With that, Mr. Chairman, again, thank you for the hearing. I yield back.

Mr. GIBBS. OK. A couple questions. I think maybe for Mr. Young and Mr.—the person from Pennsylvania, I am sorry—you know, there has been some talk maybe—well, first of all, the Good Samaritans, how many are out there? I mean is it a lot, or is it just a couple? I mean what would be the potential?

And I think, Mr. Young, you made a good comment there, that for remining and resources there could be a lot. Can you give us some idea? I mean we have got thousands of these abandoned mines. What is the interest out there? Is it mining companies, mostly, or is it Trout Unlimited?

Mr. YOUNG. Well, I can tell you, just from doing a little bit of research in my State of Colorado, that we have about 30 watershed groups that have been created and established for the sole purpose of looking at addressing the impacts to their watersheds, which is primarily coming from abandoned hardrock mines.

So there are 30 folks right there. Then you add in the State itself, and you add in groups like Trout Unlimited, who has actu-

ally been doing great work in mines in Colorado, specifically. Then you add the mining companies, you add the tribes. I mean potentially you could have tribal folks, if they have the wherewithal and could subcontract, as well.

So, I mean, the idea—if you see in my written testimony, my definition of a Good Samaritan is a very broad definition. Just anybody that wants to aid and make improvements, but didn't have any past connections, it could be quite a few.

Mr. GIBBS. The point that I am trying to get clarified, that is it significant? Because I think there are some out there who say, "Well, not really. We got to have all these other resources coming in," and sometimes, if you tax too much, you end up with less. So you know, I have a whole theory. If you want more of something, tax it less. You want less of something, tax it more. That might apply, if you get to a certain level. Just editorialize there a little bit.

Anybody want to speak up about who should administer a Good Samaritan program? Should it be the U.S. EPA? Should it be the States or how should that be structured?

Mr. YOUNG. Well, I would say that what we looked at in the past would be thinking about having it be a delegated State program. You do have to have somebody that would be looking at the plans and proposals, and it could easily be the States.

But you are right. Whatever program, whatever mechanism you choose to try to house this within, whether it is CERCLA, brownfields, Clean Water Act, you would have to have somebody that these Good Samaritans would go and get approval. So you would have to work through those. But it is up to what makes the most sense, and where you can get the most support.

Mr. GIBBS. Mr. Cavazza, you had a comment?

Mr. CAVAZZA. I will agree with what Mr. Young said. I mean we feel strongly that the States are in the best position to have primacy delegated to them to implement a Good Samaritan program for, you know, Federal Clean Water Act liability protection, and possibly CERCLA liability protection. We have a lot of experience with delegated programs like the mining program and already some delegation under the Clean Water Act. So we would know the Good Samaritans and partners involved, and also, I think, have a better handle on the problems, and what the potential solutions are.

Mr. GIBBS. OK. Another question, I think probably for Mr. Russell and Mr. Young, potentially, because you are in that locale, I think. On the Gold King spill out there, we had a lot of discussion with the first panelist about questioning the expertise and their hiring of private contractors and an investigation.

Does anybody want to comment on what your feelings are about what is going on? Is the investigation significant? I mean is it credible enough, the way they are going about it, or should they go about it like the Tennessee Valley Authority did? You know, what are your thoughts, being out there in the area? What are you seeing? Not to put you too much on the spot, but——

Mr. RUSSELL. Yes, Mr. Chairman, I really am not that knowledgeable about what EPA is doing on that investigation. It is a

tragedy that it happened, and I think it could have been prevented by having the right expertise working on it at the beginning.

Mr. YOUNG. And I think you also heard that this particular mine, the drainage adit, was part of a larger complex of different mine tunnels. And the reason why I think we need a Good Samaritan program is because it also protects people who would go in and do investigations, thorough investigations.

Right now, that—because of liability exposure potential, there is a discouragement to even go and really do thorough investigations of just how the Gold King Mine connects with Sunnyside or some other mines that are in that complex. And if you do "solution X" on one adit, it might have some implications in other structures underground. And I think this may be an example—I don't know too much about the investigation, so I can't answer your question specifically. However, I am trying to use the Gold King as an example of why we really need Good Samaritan program in Federal statute, so that we can incentivize more people to do thorough investigations to see how the underground hydrology works, and not have to worry about even investigating being then saddled——

Mr. GIBBS. So what you just said to me, what—being a novice, and, you know, not an expert in mining, we got an interconnectivity issue in this mine, or this spill, and the Bureau of Reclamation doesn't have the experts. We know the EPA doesn't have the experts. We already, I think, came to that consensus at the first panel. And if they don't bring in the right people, we probably won't get the real determination of what the investigation—what really happened, or—to have another one.

Mr. YOUNG. Correct. I think if you can—if we can find a way to prevent or reduce the exposure of liability to folks who would go in and poke around just to see what is there——

Mr. GIBBS. Got you.

Mr. YOUNG [continuing]. Then, you know, I think we could have more capability brought to the attention of these sites as a complex, and potentially avoid a Gold King.

Mr. GIBBS. Mr. Wood, since you have got some experience out there with Good Samaritan work, how many have actually carried out and resulted in—you know, from this guidance that they put out in 2012, have we got some positive results? What is your experience?

Mr. WOOD. So there is actually two sets of guidance that EPA put out. One was as a result of a project that we did at a place called American Fork Canyon in Utah, where we were trying to protect a Bonneville cutthroat trout population from some historic mine waste that was leaching into the stream. And we negotiated an agreement with the EPA that became the basis for what they call the Good Samaritan policy, which we think provides an effective protection from CERCLA liability.

So we were able to use that. To my knowledge, I think we are the only entity that has ever used the 2007 Good Samaritan policy. We have used it three or four times to—basically, we come up with a plan of operation, we have engineers that do this for us. They then get that approved by the EPA, and we are protected from liability, so long as we are not negligent.

As far as the 2012 EPA guidance, that was targeted at the Clean Water Act. And frankly, we didn't feel that that provided—that provides us enough protection to get involved in issues of draining adits. So we will not be utilizing that.

Mr. GIBBS. OK. Just one last quick question in regard to partial remediation and not going in and doing a complete cleanup—because under the CWA right now it is potentially a liability for Good Samaritans to have to go the whole route, and that is one of the hurdles.

Is there anybody on the panel that doesn't support partial remediation?

[No response.]

Mr. GIBBS. We are all good on that, right? I would hope so. I just wanted to make sure, because of all the issues there.

So, Mrs. Napolitano, you have any final questions?

Mrs. NAPOLITANO. Well, I would like to ask probably of Mr. Russell, what is the process of a mine, when it is closed, a hardrock mine when it is closed? What do they do to the mine?

Mr. RUSSELL. That would—it is, obviously, a site-specific response. But in general, at the end, at the latter stages of the mining process today, mines are designed to be closed. So at the latter stages of the active mining, activities are being taken to recontour and regrade the site. To address any residual chemicals, covering materials that could have potential——

Mrs. NAPOLITANO. How do they do that? How do they do that? They put water in it? Do they fill it with water?

Mr. RUSSELL. Well, if it is an open pit or an underground, some may fill with water at closure. Some are dry closures. It just depends on the geography of the—geology of the site.

Mrs. NAPOLITANO. OK. And if there is a watershed coming through, will that fill up that water—potential leak problems in the future?

Mr. RUSSELL. It is, again, site-specific. In many cases, no. In some cases, that is a concern. But that would have been identified in the initial baseline environmental study that would have done exactly what Mr. Young was saying on some of these abandoned sites that can't be done. But for an active or a new mining operation that is thoroughly investigated prior to the start of mining operations, so we know at the time of closure if that would be an issue that needed to be addressed, and we would try to address it as a part of the act of mining operation, not leave it to the final stages of closure.

Mrs. NAPOLITANO. But in the mines that have not been covered through the mining law, it was prior to, the old abandoned, what happens to them? I mean they are graded? Does somebody go back and reassess them and be able to say these are possibly—mines that are—possibly might be leaking contaminants into the nearby streams or the rivers or the aquifers?

Mr. RUSSELL. You are talking about abandoned lands at this point?

Mrs. NAPOLITANO. Correct.

Mr. RUSSELL. Yes. So abandoned mines that have been identified and resources brought to bear, such as Trout Unlimited and others through a Good Samaritan effort, or State programs like in Penn-

sylvania, they are being addressed by either removal actions, cover actions, et cetera, to address whatever that source of contaminant is to reduce or remove it.

Mrs. NAPOLITANO. But it depends on the size of the problem, too, so that the Good Samaritans would not be able to go in and clean up a major site. So what happens to those mines that are not going to be considered doable for a Good Sam to go in and work with?

Mr. RUSSELL. There may be limits to what a Good Sam would be interested and willing to do. But I think if the goal is improvement in the environment, or reduction in risk to human health or public safety, then there is a lot that can be done. A big bang for a small amount of dollars can be achieved by partial remediation at those sites.

Mrs. NAPOLITANO. Right. But there are still going to be some that are going to fall through the cracks, and how do we protect the communities and the environment and all the other things that are impacted with those that are not going to fall into that let's look at them and find out where they are at, or they are on the list, or their potential—what about those mines?

Mr. RUSSELL. Well, those sites, again, by making some measured gains that we have seen through collaborative efforts and through the State programs that Mr. Cavazza has talked about, we are addressing those. But there—and not all the sites. I mean you talk about—you heard half-a-million sites. There is just a subset of those that pose any environmental issue whatsoever. Some are a small pit, some might be a shaft.

But there are—in that universe it is only a subset of sites that actually are posing environmental issues. Not to undermine that—those impacts on those sites, but it is not all of those sites.

Mrs. NAPOLITANO. And to Mr. Wood, Ms. Pagel, is there some aspect of this that we need to start maybe recognizing that there is an impact, going to be a future impact on those that are not being addressed, that are falling through the cracks, if you will?

Ms. PAGEL. Yes. While Good Samaritans can take on some of these sites, and hopefully will, the—you know, the issue of—you know, that the chairman brought up of taxing too much and et cetera, you know, the hardrock mining industry in this country has been able to take minerals from public lands without paying a royalty—so for free—since 1872. They have not paid a reclamation fee. They have significant tax breaks. And it is the—in order to get those sites cleaned up that are not going to be cleaned up by a Good Samaritan, we need resources from a reclamation fee to do that. And it is long overdue to have that type of reclamation fund.

Mr. WOOD. I will simply add that, you know, I hope we can get to a point that we are concerned about the mines that are falling through the cracks. Because right now, the situation we have is that EPA is worrying about 127 or so Superfund sites, the worst of the worst. And then everybody else is running around, trying to cobble together nickels and dimes, and partnering with great fear of exposure and risk of liability to get what we can done.

But the game is not about what is falling through the cracks, because the cracks are defining the game right now.

Mrs. NAPOLITANO. Well, what would you suggest is an adequate and a fair way of dealing with it? Anybody.

Mr. WOOD. Well, I mean, I think—you know, as I think you have—this may be a rare hearing, where you have unanimity on the panel, but I think we need to have Good Sam protection, particularly relative to the Clean Water Act. And I think we need to have a dedicated funding source. Now, whether that comes from a tax or something else, you know, there are many paths to the top of the mountain. But once you get there, the view is the same.

The fact is we have to find a dedicated funding source, wherever it comes from, because the magnitude of the problem is too great to not.

Mrs. NAPOLITANO. Thank you.

Mr. YOUNG. I would submit that it is conceivable, if we had a Good Samaritan program, that we wouldn't have any fall through the cracks. I think there is enough—I just gave you the number that we have, 30 watershed groups in Colorado. They would be more than willing to take the initiative to find the resources and the technologies to do the cleanup on anything that is affecting their watershed.

And you know, clearly, because you asked, there are techniques you can employ. They don't have to all be active, meaning you don't have to create a wastewater treatment facility that is expensive and that has to be operated continuously. You can do passive systems, or you could even put bulkheads in these draining adits to actually prevent any future releases at all.

So, there is a range of technologies and techniques that each have their own expenses associated and effectiveness. And so I think—I mean I am just trying to suggest that I think if we can get a Good Samaritan program going, and in place, that the resources will come, and we may be able to capture all of it, potentially. I mean that is the hope.

Mrs. NAPOLITANO. And that also would bring to mind—in my mind—the issue of recycling that water, reclaiming that water, cleaning that water for potential use.

Thank you, Mr. Chair.

Mr. GIBBS. Just a quick question comes to mind. We talk about the funding source, and I know Ms. Pagel says and Mr. Wood says how necessary it is. I am assuming States do have some fees attached to that hardrock mining. Anybody want to——

Mr. YOUNG. Yes, some States do. I know Nevada has a State fee.

Mr. GIBBS. OK. It is on hardrock mining——

Mr. YOUNG. It is on hardrock.

Mr. GIBBS [continuing]. In Pennsylvania, I guess, but you have probably got some fees——

Mr. CAVAZZA. We do have some small fees that noncoal operators pay, but it is a very small fee, and it generates a very small pot of money to deal with noncoal reclamation. But the only fee Pennsylvania has for coal reclamation and treatment of mine drainage from those abandoned mines is the Federal abandoned mine land grants——

Mr. GIBBS. OK.

Mr. CAVAZZA [continuing]. That we receive, just like Ohio. And as you know probably, the authorization to collect that fee runs out in 2021. And just like funding needs for hardrock, I think that fee

needs to be extended, because there is a lot of work left to do, and that—it has certainly gone a long way to help solve the problem.

Mr. GIBBS. OK. Well, I want to thank all the panelists for coming in today. It has been helpful as we work forward. I think there is definitely a need, a consensus that we need to do something to help the Good Samaritan policy, and to make it work, because currently it isn't working very well.

So thank you very much, and this adjourns the hearing.

[Whereupon, at 12:32 p.m., the subcommittee was adjourned.]

TESTIMONY OF
MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

October 21, 2015

Chairman Gibbs, Ranking Member Napolitano, and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear today to discuss former and abandoned mine cleanup and related Good Samaritan issues.

Former and abandoned mine sites can pose public safety and environmental hazards. Former hardrock mines located in the western states are among the largest sources of pollution degrading water quality in the United States. Acid mine drainage from these mines has polluted thousands of miles of streams and rivers, as well as groundwater, posing risks to human health, wildlife, and the environment. This polluted drainage can also affect local economies by threatening drinking and agricultural water supplies and limiting recreational use of water resources.

CLEANING UP HAZARDOUS WASTE SITES UNDER CERCLA

Protection and restoration of our land is an important component in the EPA's mission to protect human health and the environment. The EPA leads the federal effort to reduce risks posed by contaminated land, undertaking cleanup and other activities that allow land to be returned to

beneficial use. Since the 1980 enactment of CERCLA (or "Superfund"), the EPA, along with federal agencies and states and tribes, have made significant progress toward this goal.

Under the Superfund program, 1,709 hazardous waste sites have been final listed on the Superfund National Priorities List (NPL). The EPA has used its Superfund program authorities to address hazardous releases related to former or abandoned mines at sites both listed and not listed on the NPL. Of the 1,709 sites, 129 are mining and mineral processing sites, and another eight sites are being addressed through Superfund Alternative Approach agreements.

From fiscal year 2010 through fiscal year 2014, the EPA expended more than $1 billion for Superfund removal and remedial actions at non-federal NPL and non-NPL mining related sites. Of that amount, approximately $585 million came from congressionally appropriated Superfund program funds and $470 million came from responsible party settlement funding held in Superfund Special Accounts. These expenditures do not include resources contributed by responsible parties, including federal agencies, on cleanup work that they have performed.

FORMER AND ABANDONED HARDROCK MINE SITES

A 2011 U.S. General Accountability Office report found there were at least 161,000 abandoned hardrock mine sites in the 12 western states and Alaska, and at least 33,000 of those sites had degraded the environment by contaminating surface water and groundwater or leaving arsenic-contaminated tailings piles. In Colorado alone, the state has identified approximately 23,000 former mines. Other state inventories can be found at the following link:
http://www.abandonedmines.gov/mapdata.html

Abandoned mine lands exist across private, mixed, federal and state lands. This mixture of land ownership adds to the complexity of the issue. Federal programs that address former and abandoned mines are spread among a variety of federal agencies with no one agency having overall statutory responsibility. Principally five federal agencies - the Department of the Interior's Bureau of Land Management, Office of Surface Mining Reclamation and Enforcement, National Park Service, the Department of Agriculture's Forest Service, and the Environmental Protection Agency provide federal funding for the cleanup of some of these hardrock mine sites.

To help address the legacy of hardrock mining across the country, the Department of the Interior has an Abandoned Mine Lands (AML) program for hardrock mines on federal lands. The Administration has proposed in the FY 2016 and prior budgets to fund the program through a new AML fee which would hold the hardrock mining industry responsible for the remediation of abandoned hardrock mines on public lands, just as the coal mining industry pays to reclaim abandoned coal mines.

HARDROCK MINING SITES AND EPA's GOOD SAMARITAN TOOLS

The EPA has heard from certain stakeholders that liability concerns, whether under the Clean Water Act (CWA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), may deter voluntary remediation efforts. Private parties cleaning up a release of hazardous substances feared potential liability as either an operator of the site, or as an arranger for disposal of the hazardous substances. Parties had been also concerned that required permits under the CWA may impose an obligation to meet water quality standards in streams that were already in violation of those standards. Addressing the liability concerns would encourage more Good Samaritans to perform cleanup actions in watersheds affected by acid mine drainage.

Cleanup activities performed by Good Samaritans can result in environmental improvements and improve water quality. By addressing potential liability for Good Samaritans, more voluntary and collaborative efforts would be encouraged to restore watersheds impacted by acid mine drainage.

It is important to note, encouraging Good Samaritan cleanups is not about inappropriately lowering environmental standards nor letting polluters off the hook. Good Samaritans should be held to a standard that results in environmental improvements. To that extent, in 2007, the EPA issued administrative tools that provide strong protections for Good Samaritans under CERCLA. The agency interim guidance and the model Good Samaritan Agreement and comfort/status letter can be used to provide greater legal certainty to a volunteer while also providing adequate assurances to the agency that a cleanup will be performed properly. These tools were intended to address the performance of a removal action by a Good Samaritan at an orphan hardrock mine site where the Good Samaritan's voluntary effort will accelerate partial or complete cleanup and will result in environmental improvement.

Further, in 2012, the EPA issued another memorandum to provide clarification that in general, a Good Samaritan would not be the entity responsible under the Clean Water Act to obtain a discharge permit after the completion of cleanup work under a CERCLA removal plan developed pursuant to an Administrative Settlement Agreement. Thus, the administrative tools addressed many of the Good Samaritan issues raised to the EPA by stakeholders over the years.

CONCLUSION

The hundreds of thousands of former and abandoned hardrock mine sites located throughout the country pose public safety and environmental hazards. Former hardrock mines are among the largest sources of pollution degrading water quality in the western United States. The scope of the problem cannot be addressed solely by current federal or state cleanup programs. Much more must be done to address the risks posed by former and abandoned hardrock mines. Encouraging Good Samaritan cleanups and passing the AML fee are just some of the many tools needed to help address the complex and costly problem posed by polluting former and abandoned hardrock mines.

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On Behalf of

The National Association of Abandoned Mine Land Programs

and

The Interstate Mining Compact Commission

Before the

SUBCOMMITTEE ON WATER RESOURCES AND THE ENVIRONMENT
of the
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

Oversight Hearing on Abandoned Mines in the United States
and Opportunities for Good Samaritan Cleanups

October 21, 2015

Statement of Eric Cavazza, Director, Bureau of Abandoned Mine Reclamation, Pennsylvania Department of Environmental Protection

Good morning, Mr. Chairman. My name is Eric Cavazza and I am the Director of the Bureau of Abandoned Mine Reclamation within the Pennsylvania Department of Environmental Protection and the outgoing President of the National Association of Abandoned Mine Land Programs (NAAMLP). I am appearing here today on behalf of NAAMLP and the Interstate Mining Compact Commission (IMCC).

Introduction

We appreciate the opportunity to appear today to share our views and concerns regarding this very important initiative. My comments today will address the issue of abandoned mine lands and the potential for a Good Samaritan program to encourage the remediation of abandoned mine sites by individuals or entities that are not legally responsible for the remediation. This is a topic of great interest and importance to the Commonwealth of Pennsylvania and the states and Tribes represented by IMCC and NAAMLP. My testimony today will focus on the nature and extent of AML problems throughout the country, the potential benefit of a Good Samaritan program, the model and success of the Pennsylvania Good Samaritan program, and the importance of incorporating certain provisions into any potential Good Sam legislation, in order to ensure the program achieves the maximum benefit possible to the health of the environment and to our coalfield and hardrock AML communities.

There are myriad reasons that a federal Good Samaritan program is needed, but the most important is to remove the potential for incurring liability under federal environmental protection statutes such as the Clean Water Act. These liabilities deter motivated, well-intentioned volunteers from undertaking projects to clean up or improve abandoned sites, thereby prolonging the harm to the environment and to the health and welfare of our citizens. These prohibitive circumstances also have economic impacts that are felt nationwide. In addition, the universe of abandoned mine lands is so large and the existing governmental resources so limited that without the assistance of Good Samaritan volunteers, it will be impossible to reclaim all of these lands and clean up all of the AMD impaired waters.

The Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) are multi-state governmental organizations that together represent over 30 mineral-producing states and Indian tribes, each of which implements programs that regulate the environmental impacts of both coal and hardrock mining and that reclaim abandoned coal and hardrock mine sites. Many of these programs earned delegations of authority from the federal government to implement national environmental laws such as the Surface Mining Control and Reclamation Act (SMCRA) and the Clean Water Act.

The Abandoned Mine Land Problem

Over the past 40 years, following the passage of comprehensive national environmental laws, the states and Indian tribes have taken the lead in fashioning and implementing effective programs for the regulation of mining and its impacts, including the cleanup of inactive and abandoned mine lands.

Nationally, coal and hardrock abandoned mines continue to have significant adverse effects on the environment. Environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, uncontrolled sedimentation, chemical releases, and acid mine/acid rock drainage. Safety hazards associated with abandoned mines account for several deaths and numerous injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years prior to the implementation of present day regulations and controls, are scattered throughout the United States. The sites are located on private property, state owned land, and federal public lands.

We commend you, and your colleagues, Mr. Chairman, for your continuing efforts in pursuing Good Samaritan protections under the Clean Water Act for those interested in treating abandoned mine water discharges. Despite the extraordinary dedication of those involved in the AML arena, there remains a substantial amount of work to be done. This is due primarily to insufficient funding, not a lack of will by the states, tribes and others. The states and tribes – often together with our federal agency partners as well as local watershed groups – have made notable progress in addressing the issue. But our efforts need a substantial boost and the potential Good Samaritan solution before the Subcommittee today will propel us toward accomplishing this goal. A Good Samaritan program will allow us to engage the knowledge and passion available in local watershed groups coupled with private sources of funding to accomplish much more reclamation and watershed restoration. This effort would be undertaken with little or no additional cost to the government, simply by protecting these groups from unreasonable and prohibitive liability.

Hardrock AML sites continue to pose an especially difficult problem, largely due to the lack of a federal hardrock AML program such as is in place for coal AML remediation. Over the years, several studies have been undertaken in an attempt to quantify the total hardrock AML cleanup need. Despite these efforts, there is currently no comprehensive, fully accurate on-the-ground national inventory of the hardrock AML problem. Estimating the costs of reclaiming hardrock abandoned mines is difficult for a variety of reasons, one of which being the time-consuming and expensive nature of inventorying work. The cost of remediating environmental problems such as ground water and surface water contamination, acid mine/acid rock drainage or windblown contaminants are even more difficult to estimate. Despite the lack of a complete inventory, the data demonstrates that nationally there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that cumulative remediation costs are very large.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. Although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states and tribes are intimately familiar with the highest priority problems within their borders and know where limited reclamation dollars must be directed to protect public health and safety or protect the environment from significant harm.

Today, state and tribal agencies are working on hardrock abandoned mine problems through a variety of state and federal funding sources. Various federal agencies, including the U.S. Environmental Protection Agency, the Bureau of Land Management, the National Park Service, the U.S. Forest Service, and the U.S. Army Corps of Engineers have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states and tribes with their hardrock AML work. As states and tribes take on a larger role in hardrock AML cleanups in the

future, they will continue to involve their federal partners. Unfortunately, most of these existing federal grants are project specific and do not provide consistent funding.

For states and tribes with coal mining, the most consistent source of AML funding has been the Title IV grants authorized under the Surface Mining Control and Reclamation Act (SMCRA). While the vast majority of this funding is used to address coal AML and AMD problems, *Section 409 of SMCRA allows states and tribes to use these grants at high priority non-coal AML sites.* The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites. The small amount of money that SMCRA states have been able to spend on physical safety hazards at hardrock sites appears to be making a difference. More specific information regarding the nature and extent of the hardrock AML accomplishments of the states and tribes is available from IMCC and NAAMLP or at the federal Office of Surface Mining (OSM) website (www.osmre.gov).

A federal Good Samaritan program also holds immense potential benefit for remediation of abandoned coal mines, in particular where they affect surface and groundwater resources. The AML program under Title IV of SMCRA is making great progress with coal AML, but these funds are limited and therefore tend to be focused on immediate health and safety problems. SMCRA requires that sites posing immediate dangers to human health and safety must be designated as higher priority. It is therefore difficult to direct meaningful AML funds to water treatment problems. These difficulties are further exacerbated by the fact that State AML programs are subject to the same potential liability issues as local watershed groups. The situation is further complicated by a decision of the U.S. Fourth Circuit Court of Appeals in *West Virginia Highlands Conservancy v. Huffman*, 625 F.3d 159 (4th Cir. 2010) which held that systems for treating water related to bond forfeiture sites qualify as point sources and require NPDES permits under the Clean Water Act. While focused on bond forfeiture sites under SMCRA, the reasoning of the decision may apply equally well to the construction and operation of passive treatment systems employed by states to address acid mine drainage at any abandoned coal mine. This situation must be rectified and ideally addressed in this legislation to clarify that NPDES requirements do not apply to AML projects conducted under Title IV of SMCRA. Often, this mandate results in less effective and more costly treatment than would a scientifically-based watershed restoration approach. Good Samaritan protections that address this issue for both local groups and state programs would go a long way toward facilitating their efforts to remediate water quality problems related to abandoned coal mines.

Further to this issue, state mining regulatory authorities, particularly in coal mining regions, have experienced significant permitting issues trying to fit abandoned mine drainage treatment systems into the NPDES framework outlined in the CWA. Although treatment systems for abandoned mine drainage have the characteristics of a point source discharge, NPDES permits have not been routinely issued in many states, (either to the state or to non-profit watershed groups or trustees of trust funds), for these treatment systems. There are several reasons for this. First, passive water treatment systems constructed at abandoned mine sites often have not been designed to meet stringent effluent limitation requirements that would be imposed by an NPDES permit. Second, watershed groups often lack the resources needed to obtain, hold and comply with NPDES permit requirements. Third, funding limitations have led many states to adopt an approach that attempts to maximize the number of discharges that receive treatment, albeit at levels that do not strictly meet water quality based effluent requirements but nevertheless significantly improve the water quality in the receiving stream and the watershed such that they can support healthy populations of aquatic life. Historically, for abandoned discharges, EPA has not

provided clear direction as to when permits are required and what the performance standards must be (likely because of the problem's complexity and scope and the lack of sufficient funding for an adequate remedy). As a result, hundreds of treatment facilities have been constructed by the states or by partnering groups or agencies in the past several decades without NPDES discharge permits being obtained for these facilities. Decisions regarding water treatment at these sites are often based on practical limitations such as available space, technology options and cost. The mine drainage at these sites is being treated, pollution is substantially reduced, and noticeable water quality improvements are being made.

One proposed "fix" is a revision to SMCRA that addresses discharges from abandoned mines covered under Title IV of SMCRA. It would provide relief from NPDES requirements under the CWA in situations where the mine discharge is being controlled and treated by state or tribal governments or their agents. These sites include passive and active treatment facilities, including a number of high-flow treatment systems. These facilities rely on standard mine drainage treatment technologies designed to meet technology-based effluent limits, resulting in a substantial reduction of pollutant loads and in significant stream restoration.

As states and tribes work to address the remaining inventory of abandoned coal and hardrock mine sites, we are increasingly concerned about the escalating costs of addressing those problems that continue to go unreclaimed due to insufficient funding. Unaddressed sites often worsen over time, thus increasing reclamation costs. Inflation without concurrent increases in funding further increases these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. In addition, the states and tribes are finding new, higher priority problems each year, especially as many of our urban areas encroach upon what were formerly rural abandoned mine sites. New sites also continually appear due to the effects of time and weather, especially in the case of mine subsidence. This underscores the need for constant vigilance to protect our citizens and their environment, and the importance of Good Samaritan relief before the Subcommittee today.

We believe that the enactment of Good Samaritan legislation will be immensely helpful to the States' and Tribes' ongoing efforts to remediate the vast quantities of AML sites remaining, and those continuing to manifest. We have seen the results from this type of approach in states such as Pennsylvania, which enacted its own Good Samaritan law to provide protections and immunities related to state clean water requirements for those groups and individuals who were not legally responsible but who voluntarily undertook the reclamation of abandoned mine lands or abatement of mine drainage. However, under the Pennsylvania Good Samaritan program, these groups are still exposed to potential liability under the federal Clean Water Act for their good deeds, which is having a chilling effect on watershed cleanup efforts.

Pennsylvania's Experience

The experience of Pennsylvania has demonstrated there are countless opportunities for Good Samaritans to clean up abandoned mine land. Pennsylvania's citizen, watershed, and environmental groups have long been working to address the problems in their geographical areas. When Pennsylvania officials tried to leverage the state's limited resources to accomplish more reclamation by working with these groups, we met significant resistance regarding sites that had existing pollutional mine drainage. Many groups would not reclaim sites that had pollutional mine drainage discharges because by

reaffecting the site, they could be held liable under state and federal law to permanently treat the discharge. They could incur this liability even though they had not created the discharge and even if their reclamation improved the overall quality of the discharge. With the advances made in science, technology, and our understanding of mine drainage, we in the Pennsylvania Department of Environmental Protection were aware of many abandoned mine discharges that could be eliminated or improved at little or no cost to the Commonwealth if we could address the potential for personal liability.

In response to this problem, Pennsylvania enacted the Environmental Good Samaritan Act[1] in 1999. Projects must meet certain criteria to be covered by the Environmental Good Samaritan Act and must be reviewed and approved by Pennsylvania's Department of Environmental Protection. Eligible projects must restore mineral extraction lands that have been abandoned or not completely reclaimed, or they must be a water pollution abatement project that will treat or stop water discharges from abandoned mine lands or abandoned oil or gas wells. The Act provides that a person, corporation, nonprofit organization, or government entity that participates in an eligible Good Samaritan project is eligible for protection if they meet certain conditions, which are elaborated upon in Appendix A.

Pennsylvania's experience indicated that landowners' exposure to potential liability also impedes AML remediation efforts. The Act therefore also provides that a landowner who provides access to the land without charge or compensation to allow a reclamation or water pollution abatement project is eligible for protection.

Pennsylvania's Good Samaritan program has been a great success and provides proof of the Good Samaritan concept. Pennsylvanians have undertaken at least 48 Good Samaritan projects to date, and the participants have included local governments, individuals, watershed associations, corporations, municipal authorities, and conservancies. Some projects are simple low maintenance treatment systems while others are large and complex.

We would like to highlight a couple of examples from Pennsylvania: the Indian Creek Restoration, a project successfully completed under the state's Good Samaritan protections, and the Gladden AMD Discharge, a project which was planned but never implemented as a result of liability concerns.

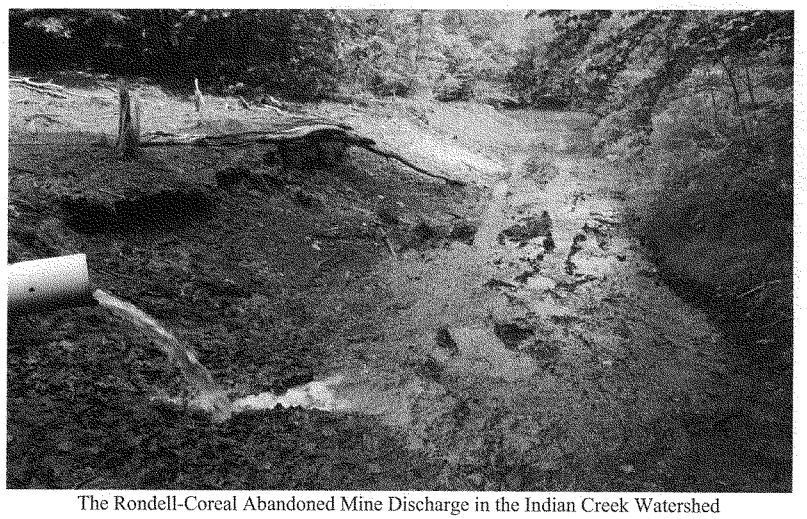
The Indian Creek Restoration Project

Over the last fifteen years, the Pennsylvania Department of Environmental Protection (PA-DEP), Bureau of Abandoned Mine Reclamation (BAMR) and the USDA Natural Resource Conservation Service (NRCS) worked with the Mountain Watershed Association (MWA) and several other partners to restore water quality and reclaim abandoned mines in the Indian Creek Watershed in southwestern Pennsylvania. Indian Creek is a 125 square mile watershed which is very sparsely populated (<10,000 residents) and contains significant publicly owned land (approximately 60% of the watershed). Indian Creek is a tributary to the Youghiogheny River which flows into the Monongahela River which flows into the Ohio River at the point in downtown Pittsburgh.

[1] Title 27 Pennsylvania Consolidated Statutes Annotated Sections 8101 - 8114

The MWA completed a watershed assessment of the Indian Creek Watershed in 1998. The study revealed that mine drainage from abandoned surface and underground mines was the biggest source of impairment in the watershed and degrading water quality in 17.4 miles of Indian Creek and its tributaries. Unregulated mining began in the watershed in the late 1800s and continued into the 1960s. One hundred and nineteen (119) mine drainage discharges from those mining operations were documented in the watershed. An analysis of those discharges revealed that the 10 most significant discharges in the watershed accounted for 94% of the total acid load, 90% of the iron load and 94% of the aluminum load in the watershed.

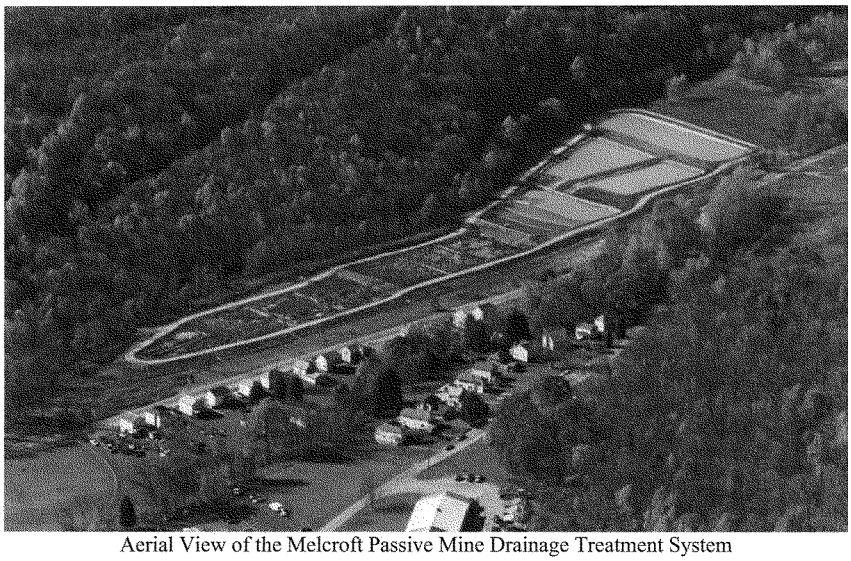
MWA worked with the NRCS to develop a PL566 Watershed Restoration Plan (completed in October 2000) to address the most severe discharges and restore water quality in the Indian Creek Watershed. Since that time, MWA, NRCS and PA-DEP-BAMR have constructed six passive mine drainage treatment systems to treat the worst discharges in the watershed. Early in the project, it was clear that most of the treatment systems necessary to restore water quality in the watershed would need to be constructed on private property. The private landowners and the MWA were both extremely concerned about liability under the CWA. The MWA along with each of the private landowners applied for and received approval for PA Good Samaritan protections for their involvement in the project. Without this protection, this project never would have been undertaken or completed. As a result of remediation work undertaken, the stream has made a dramatic recovery and now supports a healthy fish and macroinvertebrate community. Once an eyesore and a liability to the local area, Indian Creek is now a community asset and a source of community pride. A walking trail was incorporated into one of the passive treatment system designs which ties to the Indian Creek Trail that is part of the Youghiogheny Trail Network.



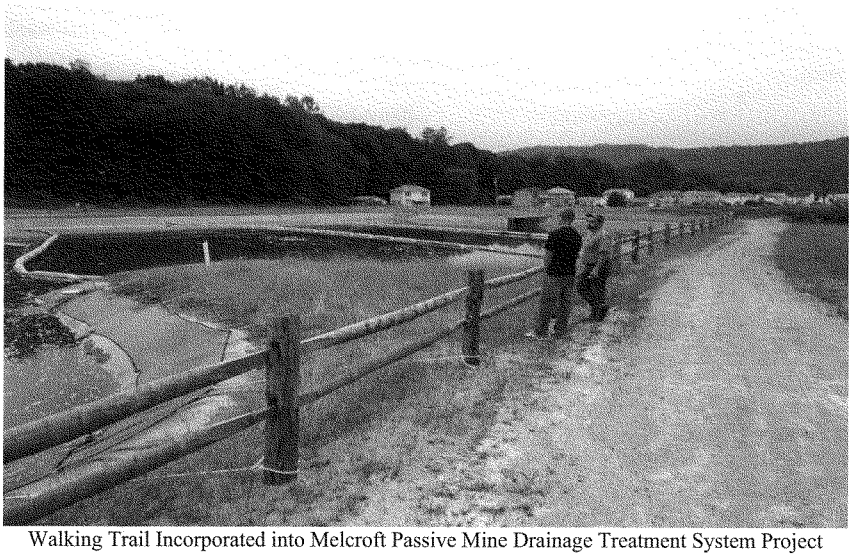
The Rondell-Coreal Abandoned Mine Discharge in the Indian Creek Watershed

Indian Creek Severely Impaired by AMD Prior to Restoration

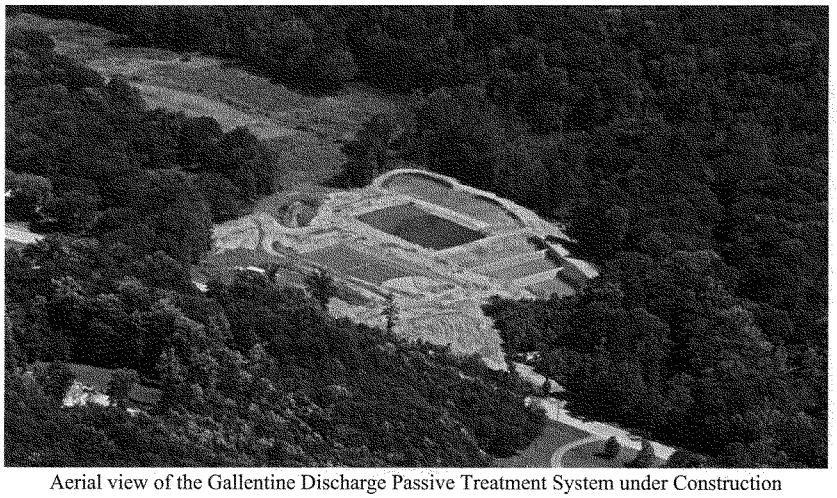
Abandoned Mine Discharge Near Melcroft Prior to Treatment



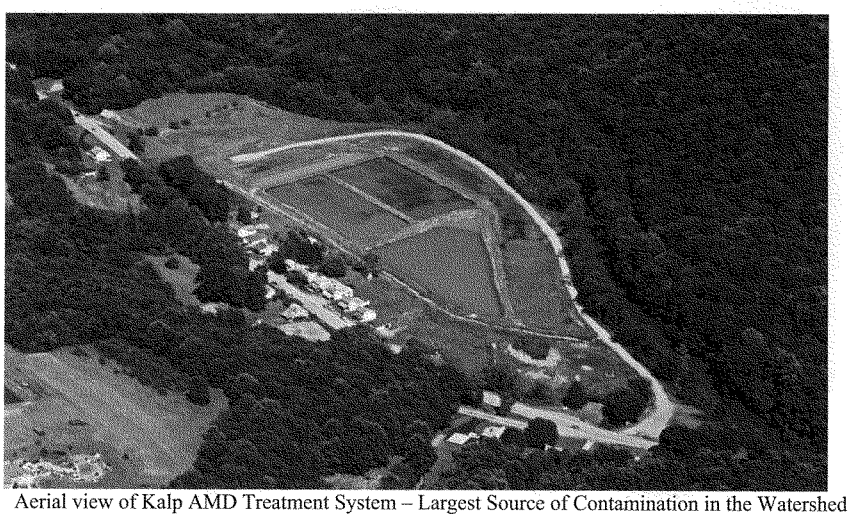
Aerial View of the Melcroft Passive Mine Drainage Treatment System



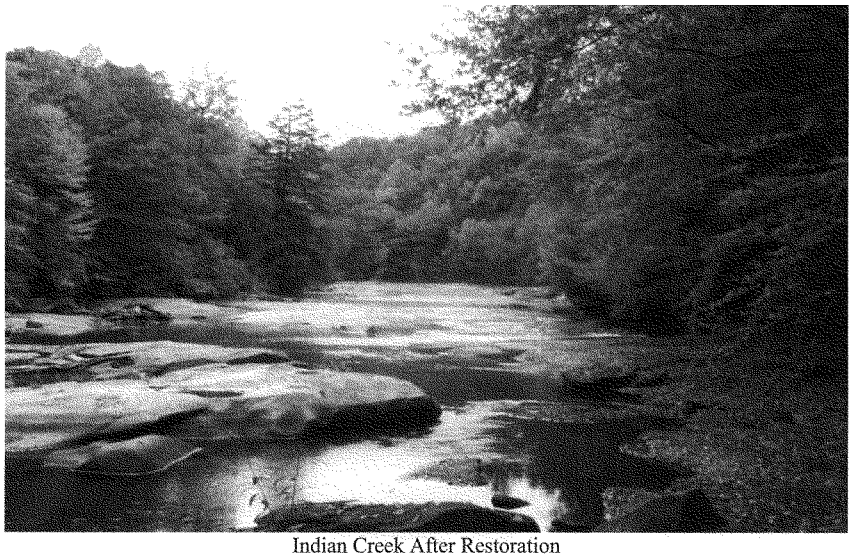
Walking Trail Incorporated into Melcroft Passive Mine Drainage Treatment System Project



Aerial view of the Gallentine Discharge Passive Treatment System under Construction



Aerial view of Kalp AMD Treatment System – Largest Source of Contamination in the Watershed



Indian Creek After Restoration

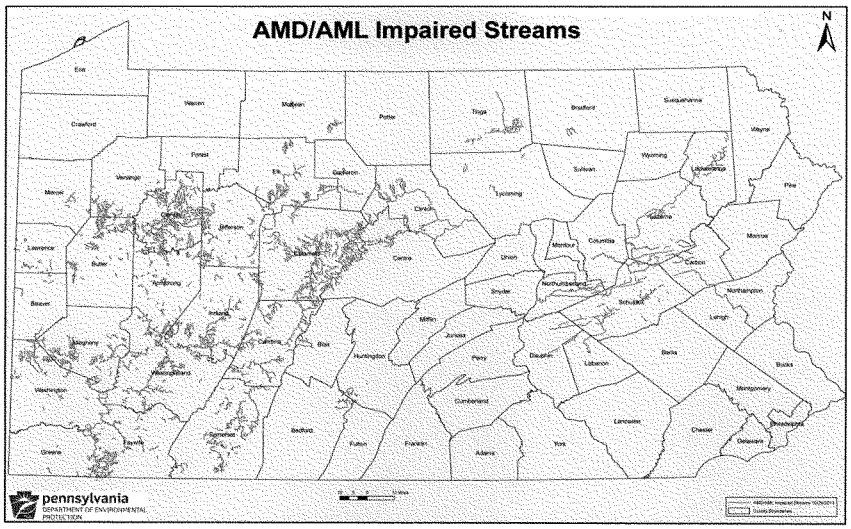
Indian Creek just Upstream of the Mouth near its Confluence with the Youghiogheny River

The Gladden AMD Discharge – Chartiers Creek Watershed

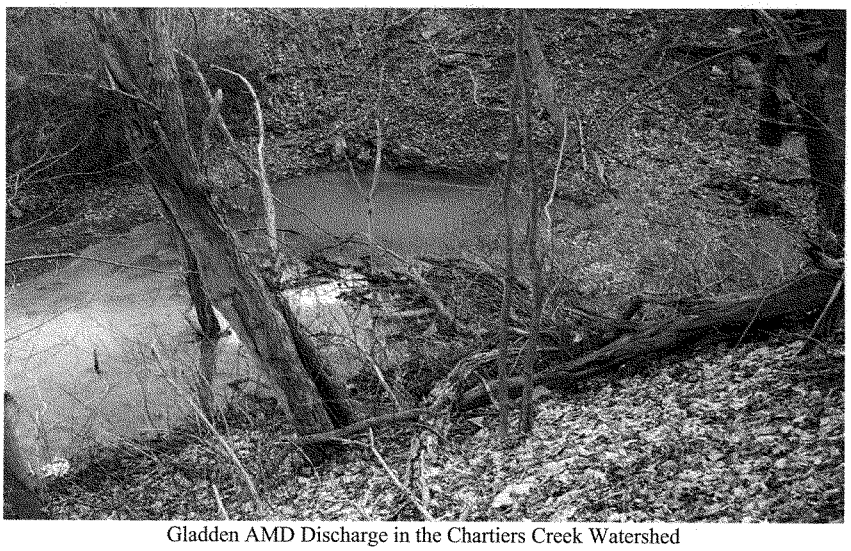
A relic of unregulated coal mining, the Gladden Discharge, named for the small community nearby, is just one of thousands of abandoned coal mine discharges that pollute more than 5,500 miles of streams in Pennsylvania. According to the Pennsylvania Department of Environmental Protection (PA-DEP), that represents about 1 mile out of every 15 miles of stream in the state. The Gladden Discharge flows from the abandoned Montour No. 2 underground coal mine operated by the former Pittsburgh Coal Company and abandoned circa 1920. The discharge dumps on average more than 900 gallons of iron-laden (approximately 100 mg/liter) water into Millers Run every minute (1.3 million gallons per day). According to watershed studies completed by the local conservation groups in conjunction with PA-DEP, the Gladden discharge is responsible for 60 % of the iron loading and 70% of the acidity loading to Chartiers Creek. Within a half-mile from where the Gladden Discharge enters Millers Run, it changes from a clear stream with trout to an orange stream with virtually no life. Millers Run then flows into Chartiers Creek degrading the stream quality to a point where it can support almost no aquatic life. Chartiers Creek, located partially in Washington and Allegheny Counties, flows into the Ohio River just a few miles downstream from the confluence of the Allegheny and Monongahela Rivers where the Ohio River is born in downtown Pittsburgh.

Two local conservation groups, the South Fayette Conservation Group and the Chartiers Nature Conservancy, have been working with the PA-DEP, Bureau of Abandoned Mine Reclamation, several other state and federal agencies, and private individuals and businesses for over a decade to develop and implement a plan to treat the Gladden Discharge and restore lower Chartiers Creek. In 2009, a private business approached the group with a concept to construct a treatment facility to treat the Gladden Discharge and to establish a long-term operation and maintenance (O&M) trust fund for the facility in exchange for the right to use some of the treated water for the water needs of the business. The total capital cost to construct the treatment facility was estimated at that time to be approximately $1.2 million and the annual O&M was estimated to be approximately $250 thousand. The facility was proposed to be built on private property and would be owned and operated by one of the conservation groups or the PA-DEP.

Both the private landowner and the private business inquired about long-term liability for their involvement in a project of this type. Both were happy to learn of Pennsylvania's Environmental Good Samaritan Act and the protections it afforded, but were disappointed to learn that no equivalent such law existed to protect them from third-party lawsuits and liability under the federal Clean Water Act. After further review by legal counsel for both the private landowner and the private business, both entities withdrew from the project. No subsequent treatment plan has been implemented for the Gladden Discharge and it continues to spew AMD into Millers Run and Chartiers Creek today.



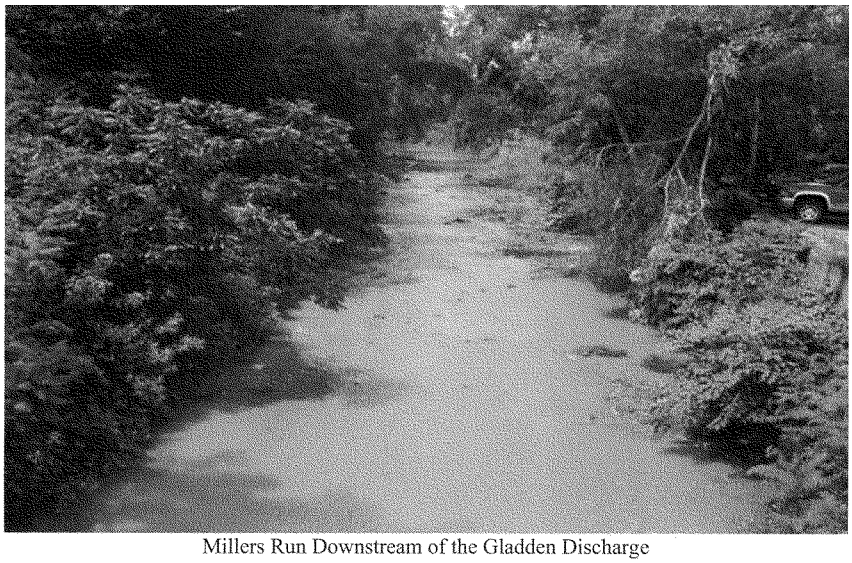
Location of the 5,500 Miles of Streams Impaired by AMD in Pennsylvania



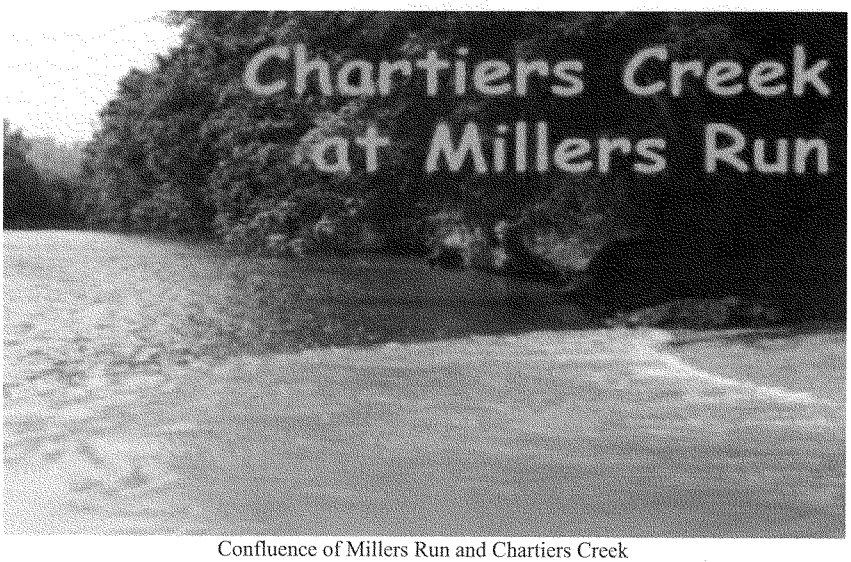
Gladden AMD Discharge in the Chartiers Creek Watershed

Gladden Discharge Confluence with Millers Run

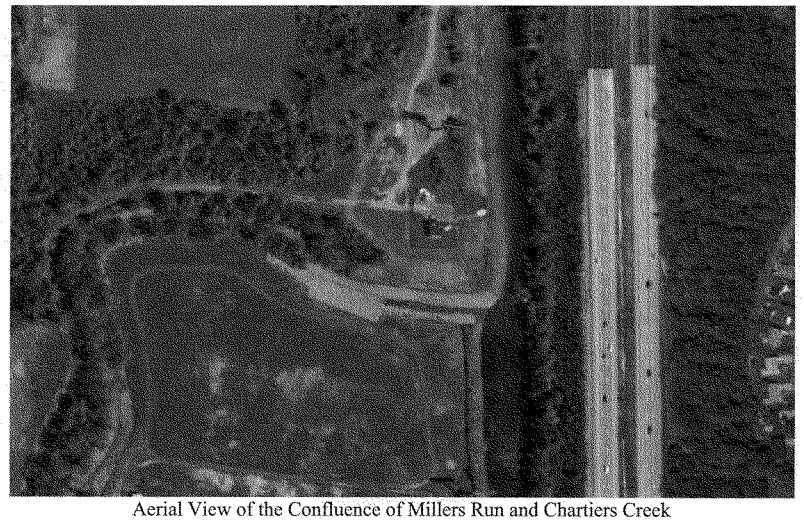
Gladden Discharge Flowing into Millers Run



Millers Run Downstream of the Gladden Discharge



Confluence of Millers Run and Chartiers Creek



Aerial View of the Confluence of Millers Run and Chartiers Creek

While substantial progress has been made under the Pennsylvania program, a number of projects have not been undertaken because of the potential for incurring liability under Federal law, such as the Gladden Discharge. The opportunities for reclamation by Good Samaritans in Pennsylvania and throughout the country would be greatly enhanced by the enactment of federal Good Samaritan legislation.

Considerations in Crafting a Federal Good Samaritan Program

Over the course of the past fifteen years, several bills have been introduced in the U.S. Congress to enhance the cleanup of inactive and abandoned mines by emulating the Pennsylvania Good Samaritan program. Each bill offered a unique approach for addressing Good Samaritan voluntary remediation efforts by removing the current disincentives in the federal Clean Water Act that inhibit these cleanups. From the states' and tribes' perspective, we have several recommendations and concerns that we believe should be considered in any Good Samaritan legislative effort.

In accordance with the principles of state primacy contained in laws such as SMCRA and the Clean Water Act, we believe it is essential that Good Samaritan programs be administered by state and Tribal regulatory authorities as the states and Tribes best understand the complexities associated with abandoned mine lands within their borders, including which sites can be improved and how to accomplish the improvement. States also tend to have a better working relationship and understanding of potential Good Samaritans. We believe that the states and Tribes are in the best position to

administer Good Samaritan programs with limited, appropriate oversight by federal agencies such as EPA and OSM.

Many previous Good Samaritan legislative efforts have focused only on liability with regard to the Clean Water Act. While this is certainly the most needed protection, we maintain that Good Samaritan remediation efforts will still be stifled by the prospect of incurring liability under a variety of other federal environmental protection laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The key here is that if potential Good Samaritans do not feel completely assured of liability protection related to these additional laws, many groups, private individuals, and businesses will have little choice but to forego remediation at sites where the risk is simply too great a threat to their organization's financial health.

Due to recent events, much attention has rightfully been paid to the problems of hardrock AML. A federal Good Samaritan program is imperative to the progress of hardrock AML work, but is also crucially important for work on abandoned coal sites. The real cost of addressing high priority coal AML problems likely exceeds $9 billion. The cost of cleaning up all coal related AML problems, including acid mine drainage, could be 5 to 10 times this amount and far exceeds available monies. A federal Good Samaritan program would empower local groups to make a much greater impact.

Furthermore, with regard to water quality treatment at coal AML sites, the state AML programs often find their hands tied by the same liability concerns from the CWA which impede the efforts of local groups. Due to the 4th Circuit court decision discussed earlier to designate water treatment facilities as point-source discharges, West Virginia must now obtain CWA permits for bond forfeiture sites. There have been concerns that this ruling could be extended to bond forfeiture sites in other states or to all AML projects being undertaken by states and Tribes. Just as with Good Samaritans, the state and Tribal AML programs are often unable to pursue simple but effective water treatment solutions where they lack the resources to engage in full remediation, for fear of incurring liability for the entire discharge as a result of affecting the site – even where the effect is undoubtedly positive. Therefore, we advise that part of a successful Good Samaritan program should include a clarification that water treatment systems constructed pursuant to Title IV of SMCRA are not considered point-source discharges and are not subject to NPDES requirements, thereby protecting the state and Tribal programs from unnecessary and prohibitive potential liability.

With respect to applicable environmental standards for Good Samaritan projects, we believe it is absolutely critical that the legislation include flexible standards to allow for partial remediation, based on a determination by a state or federal regulatory authority that the Good Samaritan efforts will result in environmental improvement. Some abandoned mine problems are so intractable that it is not possible to achieve "total cleanup" even with today's advanced technologies. These types of cleanups could also be cost prohibitive. We know that in many circumstances a limited cleanup can result in significant environmental improvement. Rejecting the notion that partial restoration that makes a significant improvement where total cleanup cannot be achieved for one reason or another is poor public policy and shortsighted. We also know that, in some circumstances, even where total cleanup is technically possible, at some juncture the cleanup reaches a point of diminishing returns and the money would be better spent on cleaning up other sites. The bottom line here is that some cleanup is usually better than none at all. We therefore recommend that Good Samaritan legislative efforts include provisions to allow the partial remediation in appropriate cases.

We also recommend that legislators consider including a provision allowing for an "end date" to be established for Good Samaritan projects that require long term operation and maintenance. The concern is that Good Samaritan's will be unwilling or unable to commit to perpetual maintenance of their treatment systems. By allowing the initial construction and long term operation and maintenance to be treated under separate Good Samaritan approvals held by separate groups, smaller watershed groups which specialize in long term maintenance work could take over responsibility from larger, better financially leveraged environmental groups that are capable of constructing expensive, large-scale treatment systems

As discussed earlier, it has been Pennsylvania's experience under its law that it is important that innocent landowners be covered for the Good Samaritan project activities. Some landowners will not cooperate if they are not protected. We recommend the inclusion of language speaking directly to the potential liabilities of landowners who would otherwise allow free access to Good Samaritan groups seeking to do remediation work.

As a result of an extensive history of underground mining in Pennsylvania, thousands of coal refuse piles are scattered throughout the state in both the bituminous and anthracite coal fields. These refuse piles are unsightly, unsafe and are a significant source of sedimentation and mine drainage pollution entering the Commonwealth's streams. These piles have varying degrees of economic value depending on the method used to process and clean the coal and the volume of refuse material available at a given location. Many are good sources of material suitable for use in fluidized-bed combustion processes employed at cogeneration plants. As a consequence, mining companies see opportunities in conducting remining activities at these sites. However, the related mine water treatment liability has historically served as a deterrent to remining.

To address the issue Pennsylvania has instituted incentives for remining at both large economically viable refuse sites and for smaller abandoned coal waste sites that have low economic value. Large economically viable sites are typically permitted under the Title V regulatory scheme. Permit applicants are required to establish existing site-specific baseline pollution loads. The permit applicant must then demonstrate that the remining and reclamation of the site is likely to improve or eliminate the pre-existing discharge. These permitting decisions are made using the Best Professional Judgment Analysis in accordance with the Clean Water Act. If the remining project is successful, then the mine operator is not held responsible to treat the portion of the pre-existing discharge that remains. If the discharge is made worse, then the operator must treat the discharge to the point of the previously established baseline.

At smaller refuse sites, the Commonwealth implemented a program, known as Government-Financed Construction (Reclamation) Contracts (GFCCs), where a reclamation contract is issued under Pennsylvania's federally approved SMCRA, Title IV Reclamation Plan. Remining does not typically occur at these sites due to the low economic value of the waste coal, the cost of obtaining a Title V mining permit, and/or the potential liability if a discharge is present. The Title IV approach allows a contractor to remove incidental coal refuse during the reclamation of an abandoned mine site in order to accomplish reclamation without incurring liability for pre-existing discharges. The value of the coal or coal refuse that must be removed to reclaim the site offsets the cost of the reclamation project. Under this program, the mining industry has made progress in reclaiming coal refuse and other AML sites at no

additional direct cost to the commonwealth. Between Jan. 1991 and Dec. 31, 2014, there were 262 contracts issued reclaiming 2,956 acres for a total reclamation value of approximately $19.4 million. In the anthracite coal fields of Northeastern Pennsylvania, coal refuse mining accounts for the removal of about 4 million tons of abandoned coal refuse each year.

By providing for these remining and refuse recovery opportunities, the Commonwealth of Pennsylvania has succeeded in encouraging a substantial amount of mine water remediation which would otherwise likely have gone untreated. Since its inception, Pennsylvania's reclamation and remining incentives programs have been very successful. Coal mine operators using these programs have reclaimed over 6,900 abandoned mine land (AML) acres equivalent to an estimated $44.9 million in reclamation value at no cost to the public. Similar programs have been developed and implemented in other states with similar positive results, and any Good Samaritan Program implemented at the federal level should not interfere with these well-established and successful remining programs.

Finally, Good Samaritan protections should be extended to both public and private lands. Pollution problems know no such boundaries and must be addressed wherever they occur. The environment and public health and safety all benefit by cleanup of abandoned mine lands and restoration of AMD impaired streams, whether public or private.

Conclusion

The legacy of abandoned mine lands still looms large in many of our nation's communities. In the pursuit of eliminating the lingering effects of abandoned mines, and in particular the impairment of water resources, every source of help is needed. To that end, the enactment of reasonable CWA liability protection for prospective Good Samaritan groups and State and Tribal AML programs holds immense potential benefit. The experience of Pennsylvania demonstrates that the Good Samaritan idea works, but the obstacles to further enfranchisement of these groups must be removed. It is time for Congress to act to enable Good Samaritans to help conquer the monumental task of reclaiming our abandoned mine lands and restoring our mine drainage impaired waters.

Thank you for the opportunity to submit this testimony. Should you have any questions or require additional information, please contact us.

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Appendix-A

Pennsylvania's Environmental Good Samaritan Act provides that a landowner who provides access to the land without charge or compensation to allow a reclamation or water pollution abatement project is eligible for protection. The Good Samaritan Act also provides that a person, corporation, nonprofit organization, or government entity that participates in a Good Samaritan project is eligible for protection if they:

- Provide equipment, materials or services for the project at cost or less than cost.
- Are not legally liable for the land or water pollution associated with past mineral extraction.
- Were not ordered by the state or federal government to do the work.
- Are not performing the work under a contract for profit, such as a competitively bid reclamation contract.
- Are not the surety that issued the bond for the site.

Landowners who provide free access to the project area are not responsible for:

- Injury or damage to a person who is restoring the land or treating the water while the person is on the project area.
- Injury or damage to someone else that is caused by the people restoring the land or treating the water.
- Any pollution caused by the project.
- The operation and maintenance of any water pollution treatment facility constructed on the land, unless the landowner damages or destroys the facility or refuses to allow the facility to be operated or repaired.

Landowners are not protected from liability if they:

- Cause injury or damage through the landowner's acts that are reckless, or that constitute gross negligence or willful misconduct.
- Charge a fee or receive compensation for access to the land.
- Violate the law.
- Fail to warn those working on the project of any hidden dangerous conditions of which they are aware within the project area.

Landowners are also not protected if adjacent or downstream landowners are damaged by the project and written or public notice of the project was not provided.

People who participate in a Good Samaritan project are not responsible for:

- Injury or damage that occurs during the work on the project.
- Pollution coming from the water treatment facilities.
- Operation and maintenance of the water treatment facilities.

Good Samaritan project participants are not protected if they:

- Cause increased pollution by activities that are unrelated to work on an approved project.
- Cause injury or damage through acts that are reckless, constitute gross negligence or willful misconduct.
- Violate the law.

Participants are also not protected if adjacent or downstream landowners are damaged by the project and written or public notice of that project was not provided.

Testimony of
Luke Russell
Hecla Mining Company
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

October 21, 2015

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

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[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.

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[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	•National Historic Preservation Act •Air Quality Act •National Environmental Policy Act
1970s	CO: Henderson - molybdenum NV: Round Mountain – gold	•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.)		•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	•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	•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	•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

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

Subcommittee on Water Resources and Environment
U.S. House Committee on Transportation and Infrastructure

October 21, 2015, 10:00 am
2167 Rayburn House Office Building
Washington, D.C

Testimony of

Doug Young
Senior Policy Director, Keystone Policy Center

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony for today's hearing on this important and timely topic.

My name is Doug Young, and I am a Senior Policy Director with Keystone Policy Center (Keystone). Keystone is headquartered in Keystone, Colorado, with offices in Denver, and Washington, D.C. I work out of the Denver Office. I am testifying today on behalf of Keystone and my past experience working on this issue.

I have been with Keystone since September 2014, where I have focused on environmental and natural resource issues. This includes the cleanup of abandoned hardrock mines and the so-called Good Samaritan legislation.

Keystone brings together crucial teams of stakeholders who have diverse individual perspectives but recognize a common need to address urgent issues with lasting solutions. For more than 40 years, Keystone has helped leaders move beyond fixed positions toward collaborative, action-oriented approaches to problem-solving. In this age of polarized debate on nearly every major topic in public policy, Keystone offers a refreshing yet proven blueprint for progress.

In more than four decades of designing effective conflict management strategies for complex, contentious issues, Keystone has built an extensive portfolio of substantive work in energy, environment, education, health, and agriculture. Please see more at our website: www.keystone.org.

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Personal Background

In various elected offices, I have worked over the past 20 years on efforts to develop and reach consensus on proposed legalization regarding incentivizing Good Samaritan cleanups of abandoned hardrock mines. This involved bringing together various interests—from the environmental community, the mining industry, federal and state regulators, and local mine cleanup organizations—to address concerns and develop statutory language that would provide, in federal law, a program to better utilize volunteers in cleanup efforts.

I started working on Good Samaritan policy while an environmental staffer for Colorado Governor Roy Romer in 1993. As his Staff Council representative to the Western Governors' Association (WGA), I interacted with staff from other western states' governors offices. At the time, we learned that volunteers who were attempting to address safety and environmental problems at abandoned mine sites in western states were encountering questions about their potential liability for ongoing contaminated water discharges. As a result, these volunteers halted such ongoing work, stayed away from discharging water while addressing other issues at sites, or declined to engage in such work at the outset. I and other Staff Council members—with the assistance of WGA staff—decided to work on this problem. Given that these laudable voluntary efforts were designed to render aid by improving the condition of sites, the moniker "Good Samaritan" seemed appropriate and thereafter became attached as the name of legislative efforts to address liability concerns for voluntary abandoned mine cleanups. WGA has produced a number of policy resolutions on abandoned mines since 1993 and currently has a policy in place encouraging support for abandoned mine cleanup and for Good Samaritan legislation. That resolution can be found here: http://www.westgov.org/images/stories/policies/Cleaning_Up_Abandoned_Mines_in_the_West_2013.pdf

I continued to work on this issue with many stakeholders while in Representative and then Senator Mark Udall's Office. A number of bills were introduced that represented the work of these negotiations, which focused on amending the Clean Water Act (CWA), as well as bills introduced by other members.

At Keystone, we have initiated an effort bringing together a broad coalition to explore options and approaches with the goal of reaching consensus around a single approach and a corresponding Good Samaritan legislative package. This effort, which was initiated a couple of months ago, will have its first meeting on October 23, 2015. We hope that it can help provide input and perspectives for this Subcommittee's efforts.

My testimony today has been informed by these current and past efforts, and will provide the Subcommittee my perspectives on why these past efforts have been unsuccessful, the obstacles encountered, and on ways to move forward with new ideas and approaches. I will also focus on abandoned *hardrock* mines as these are the sites that present the largest concerns in the western United States.

Reports on the Extent of the Problem and History

As the Subcommittee is aware, although a complete and reliable inventory doesn't presently exist, thousands of abandoned mines have been identified throughout the country. Not all of these sites discharge contaminated water, but they all do present issues needing to be resolved and addressed. This legacy is based on our history of essential mineral exploration and development, and the techniques employed and laws in place at the time.

There are a number of reports documenting the extent of the problem and the history of western hardrock mining. These include reports from the General Accountability Office (GAO) as well as federal and state agency assessments.

In addition, an excellent report regarding mining's legacy, abandoned mines and efforts to address obstacles to cleanup was produced by the Center of the American West, an organization located at the University of Colorado's Boulder campus. This 2005 report, "Cleaning Up Abandoned Mines in the West: Prospecting for a Better Future," was the result of a number of meetings with various interests to discuss the issue and work on possible solutions. It contains examples of mines, the experience of volunteers at cleanup sites, and discussions of history and ideas to promote cleanup. I was a participant of the group discussions that led to the creation of this report. It can be found at the following link: http://centerwest.org/projects/mining/abandoned-mines-remediation

Although these reports and history are useful, our task today is not to assign blame or lament the practices of the past, but to work together to find ways to address this legacy and improve the environment and public safety by stemming—or at least reducing—the threats presented by these old mines.

Who is a Good Samaritan in the Abandoned Hardrock Mine Context?

A Good Samaritan in this context is any entity that had no past connection or involvement at an abandoned mine that seeks to cleanup, make safe and/or reduce pollution existing on and emanating from an abandoned mine. This is a broad definition and comes with a set of complicating factors that would need to be explored and addressed in any statutory program. But there is a precedent in the context of addressing environmental hazards. The Superfund law (the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) has a Good Samaritan provision that captures the same concept of a person who is seeking to administer aid to stem pollution releases without any past connection regarding those releases (Section 107(d)(1)). The idea here would be similar.

What is the Issue? Draining Abandoned Hardrock Mines

Abandoned hardrock mines that affect water quality dot many western state watersheds. Each mine has its own special concerns and challenges. But when it comes to water concerns, the issues are essentially similar. Water contamination at abandoned mines is typically produced in two ways. One is when water flows through underground mine workings that are exposed to air, the water

becomes acidic and thereby dissolves metals and other substances from the surrounding rock, and then emerges on the surface from mine tunnels (adits) and other pathways. The other is when surface water (ether from the mine tunnels or unconnected from the mine workings) flows over mine tailings and picks up contamination and transports it downstream.

Good Samaritans have been at work over the years addressing the second method by removing tailings piles and other material that come into contact with surface water flows. By and large, these efforts have been successful and have not been deterred by legal liability issues. Projects have been developed and approved here so that no wastewater permits are necessary or come into play.

It's the first situation where the legal obstacles emerge and thwart cleanup to reduce water contamination emanating from abandoned hardock mines. This is also where most of the benefit could occur with a Good Samaritan program as these draining tunnels are a significant source of water pollution harming aquatic life, riparian ecology, recreation and public health.

Are There Potential Good Samaritans? The Colorado Example

Given the complexity of this problem and the possible risks involved in cleaning up these sites, the question arises as to whether there are Good Samaritans out there willing and able to do the work. **The answer is yes.** In fact, as mentioned above, there are already Good Samaritans doing some work at these sites. There are even Good Samaritans working to address water discharges at these sites. But those examples are few and are typically the result of being listed as Superfund sites and thus have federal or state agencies partnering with local groups to get work done. But this is the exception to the rule.

To put this into perspective, consider the example of one western state: Colorado. The Colorado Division of Reclamation, Mining and Safety (DRMS) has been inventorying the mines and water impacts in the state. As of today, the agency has identified a total of 230 mines that are draining contaminated water. Of these, 47 are being addressed with active water treatment efforts, 35 mines are under investigation or are being remediated, and 148 mines—well over half—are likely impacting water quality but the draining water is not being treated. The result: Colorado has determined that about 1,645 miles of Colorado streams are impaired by this untreated mine drainage. This data can be found on a map and in a table at the DRMS website at these links:
http://mining.state.co.us/Programs/Abandoned/Documents/Draining_Mines_GISData-DRMS_08-18-15.pdf
http://mining.state.co.us/Programs/Abandoned/Documents/LegacyMineWork.pdf

There are also thousands of other inactive mine sites that also drain water, but it has been determined that the draining water is not contaminated enough to cause a measurable impact to receiving waters and thereby warrant significant cleanup activity.

At the 82 sites where some work is being done much of that involves ways to stem water contamination by removing contamination sources or implementing techniques so as to avoid becoming liable for the ongoing water discharges. In very rare cases permits are secured for active

treatment systems and are paid for by federal and state funding sources. In even rarer cases, the mine is being address due to its status as a Superfund site.

The state, through the DRMS, has spent $12 million over the past 6 years on their abandoned mine cleanup efforts. They can tackle three or four projects per year. At this rate, finding the funding and the capacity to address all 183 mines (the 230 total mines minus the 47 being addressed today) will take nearly 50 years and hundreds of millions of dollars.

And this is based on DRMS—a Good Samaritan—presently not being able to address the bulk of the problem: draining tunnels and adits. DRMS, like its colleague agencies in all western states, is interested and willing to work with others to address draining water at all 183 mine sites. But the state, as well as many other nongovernmental potential Good Samaritans, is deterred in doing so due to the long-term liability exposure from the CWA and CERCLA. If these legal obstacles can be resolved, the pace of cleanup—and the potential partners, resources and funding—could increase dramatically and shorten the 50 year time horizon of address all the identified sites in Colorado alone.

Although these sites can present complex problems, there are many Good Samaritans—like Colorado's DRMS—that are ready, willing and able to get to work to tackle these complex issues. Possible Good Samaritans have plenty of experience in addressing sites throughout the country. Trout Unlimited (TU), a representative of which is on the panel today, has been one such group that has worked on sites across the country and in Colorado, such as the Tiger Mine near Leadville, Colorado. But, TU ended up halting its helpful work at the Tiger Mine due to liability concerns. There are also many local watershed groups that know the situation with the abandoned mines in their regions and partner with state and federal agencies on cleanups. In Colorado, there are about 30 such groups. Any of these could benefit directly or indirectly by the establishment of a Good Samaritan program that would effectuate more cleanups.

<u>What Are the Legal Obstacles Facing Good Samaritan Cleanups?</u>

a. The Clean Water Act: Compliance and Liability

The past efforts to develop federal Good Samaritan legislation have focused on the primary impediment to cleanup work: the Clean Water Act.

As mentioned, the primary deterrent to the voluntary cleanup of abandoned hardrock mines has been concerns with liability for ongoing mine drainage. These are considered "point sources" of water contamination and as such fall under the jurisdiction of CWA, meaning that they need to be controlled through a permit (the national pollution discharge elimination system (NPDES) permit), meet certain state and federal water quality standards for each contaminant present in the discharge through treatment, and ensure perpetual compliance. At large complex abandoned hardrock mine sites, this issue can be—and at some places has been—addressed as the cleanup has involved entities (including states) that have the wherewithal to construct and maintain active and perpetual water treatment systems.

However, it is both uneconomical and infeasible to establish such active water treatment systems at the many thousands of draining abandoned mines. And yet other techniques—such as passive water treatment systems—are very effective at reducing the level of contaminates in the water and are much less expensive. But, these passive techniques typically do not result in water that is fully compliant with state and federal water quality standards and thus not complaint with the CWA. By affixing liability and responsibility to an entity who affects a polluting discharge—even if that entity had no past connection to that discharge and is seeking to reduce the level of contamination—the CWA deters Good Samaritans. Today, every Good Samaritan would have to secure an NPDES permit, meet state and federal water quality standards for the contaminants emanating from the mine, and ensure compliance for those standards forever. Using Colorado's numbers as an example, it effectively means that some sort of expensive and active water treatment facility would have to be constructed to address the pollution coming from all 230 draining sites.

b. CERCLA Liability

Draining abandoned mines typically contain contaminants at levels that constitute hazardous substance releases. As a result, they also fall within the jurisdiction of CERCLA. Nevertheless, the vast majority of draining abandoned mine sites do not become listed Superfund sites as they do not score high on the National Priorities List (NPL). But, because they still involve releases, these sites fall within the requirements of CERCLA.

A Good Samaritan working at a site that is producing hazardous releases could thereby become a "responsible party" and thus face perpetual liability and be required to perform or pay for activities that would stop those releases or meet permitting and contaminant standard requirements. As with the CWA, these concerns deter volunteers from doing work to stem pollution from these sites.

c. Citizen Lawsuits

The CWA contains a provision that allows third parties—citizens who are not connected with the site or the Good Samaritan—to sue if the entity is not complying with the requirements of the CWA. This is designed to help federal and state agencies promote greater enforcement and compliance with the CWA. As a statutory right, these citizen lawsuits remain available to enforce the full requirements of the CWA regardless of whether federal agencies or states have adopted policies to encourage Good Samaritan cleanups. As most Good Samaritan efforts would not involve NPDES permits or compliance with federal and state cleanup standards, every Good Samaritan project would run the risk of a citizen lawsuit. Thus, this aspect of the law would need to be addressed under any Good Samaritan program.

d. Funding

As highlighted above regarding Colorado's abandoned mine land program, cleaning up the water discharges from abandoned mines is expensive. Although there are a number of proven and effective passive treatment systems in lieu of much more expensive active water treatment systems,

these passive systems still require resources and funding. Federal agencies have funding programs in place for cleanups, but pale in comparison with the needs. Proposals have been offered to assess a fee to assign a royalty on current hardrock mining activities to help, but these have been unsuccessful due to a number of concerns, such as (1) what formula to apply, (2) what size of mining operations to assess a fee or royalty, (3) how the revenue from such a program would be allocated to states and sites, (4) and concerns about "double taxation" regarding existing state mining reclamation fees and any possible federal fee or royalty, and the possibility of an royalty assessed regarding 1872 General Mining Law reform efforts.

It is possible that if a Good Samaritan program can be established, such a program could bring additional resources and expertise to the cleanup of these sites—from philanthropic sources and the mining industry—so that establishing a separate fee or royalty could be unnecessary.

e. Other

The above issues are the primary impediments to Good Samaritan work related to water discharges from abandoned mines. It has been suggested that other environmental laws and requirements also present obstacles and should be addressed or waived to promote more voluntary cleanups, such as the National Environmental Policy Act (NEPA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA). However, these and other federal, state and local environmental requirements have not been cited as an obstacle to cleanup, and, in many cases, could be complied with or could be addressed as part of any Good Samaritan cleanup plan or statutory solution. Adding blanket waivers from these other laws without understanding how they may deter Good Samaritans or evaluating how they could be accommodated could draw opposition to creating a solution that could garner wide support.

Addressing Legal Obstacles

a. CWA Good Samaritan Permit

Past legislative efforts to address the legal obstacles have focused on creating a new permit program under the CWA called a Good Samaritan permit. Under this approach, Good Samaritan permits would (1) be separate from NPDES permits, (2) require an approved cleanup plan that is reasonable and effective but not as extensive as what would be required under an NPDES permit, (3) require water quality improvement but not to the standards commensurate with what would be required under an NPDES permit, (4) allow the Good Samaritan to cancel the permit when the treatment work was completed under the plan or if unforeseen complications arose that were too much for the permittee, and (5) shield the permittee from citizen lawsuits.

As can be expected, this effort quickly became cumbersome and contentious. The new permit had to address a multitude of issues including: (1) defining an abandoned mine site, (2) who can be a Good Samaritan, (3) how much detail needs to be in the permit, (4) what standards to apply, (5) can a site be "re-mined" so as to recover economically valuable minerals, (6) providing protection for potential permittees to investigate the site to determine if the permittee is able to address the issues

at the site and even seek a Good Samaritan permit, (7) who could be eligible as subcontractors to the permittee and addressing their liability coverage, and (8) long-term maintenance of the site and how to address issues if something goes wrong with the work after the permit is closed.

Each of these issues required extensive negotiation. Although compromises were largely reached that resulted in legislation, few were completely comfortable with the final package. In addition, larger political issues emerged from the negotiation that stymied progress on this approach. Those issues included: (1) discomfort by some with reopening the CWA, especially due to the issues surrounding the Supreme Court's decisions regarding the jurisdictional scope of the CWA, (2) the desire by some to include a CWA Good Samaritan permit program as part of larger efforts to reform the 1872 General Mining Law, (3) concerns about allowing re-mining under Good Samaritan permits and even including mining companies in the cleanup work, (4) concerns about establishing a precedent under the CWA of relaxing the requirement to meet state and federal water quality standards, (5) the desire by some to include liability protection to Good Samaritans from a number of other state and federal environmental laws and requirements, and (6) the view by some that no legislative fix was necessary as Good Samaritans liability concerns could be addressed administratively by the U.S. Environmental Protection Agency (EPA).

Because of these and other concerns, no CWA Good Samaritan permit legislation advanced. As a result, some local watershed groups that were poised to get critically needed cleanup work underway became interested exploring pilot program for their area, and a couple of bills were introduced for this purpose.

I believe it's still possible to develop a CWA Good Samaritan permit approach. However, given the concerns of some, and the complication of working through all the issues involved with these concerns, it seems unlikely that this would be a fruitful mechanism.

b. Expanding Upon CERCLA's "good Samaritan" Program

As mentioned above, CERCLA contains a "good Samaritan" provision that protects an entity from the full requirements and liabilities of CERCLA. In addition, the EPA has developed administrative policies that provide further assurances to volunteers that they will not be subject the full brunt of CERCLA.

Nevertheless, even with these statutory and administrative protections, issues remain about many aspects of CERCLA to cause concern and deter Good Samaritans. The main issue is with ongoing CWA liability from a non-permitted release that do not meet water quality standards. CERCLA's "good Samaritan" provision only shields a volunteer from liability and other requirements while doing cleanup work onsite. Its scope does not cover the ongoing water discharge post-onsite cleanup. Thus, there would still be a need to address this aspect.

Still, given CERCLA's existing "good Samaritan" provision and the EPA's policy, there may be ways to reach consensus on making small changes to CERCLA to provide protections to Good

Samaritans doing work at abandoned mine sites. This has the value of avoiding a number of the concerns listed above regarding the CWA Good Samaritan approach.

It's important to note that these possible revisions to CERCLA to create a Good Samaritan program would not necessarily result in sites being listed as Superfund sites. Many communities remain concerned that such a designation may harm the economy and other historic preservation and recreational aspects that can come with such a designation. Under this approach, communities may in fact be more welcoming of having sites cleaned up under a Good Samaritan approach without the Superfund designation and yet still see the significant cleanup work under CERCLA authorities.

Keystone hopes to explore this CERCLA-only approach with others as part of its meeting on October 23rd in Denver.

c. Separate Good Samaritan Permit Program

Because of the lack of full consensus around a CWA Good Samaritan program, past efforts have included developing a Good Samaritan permit program separate from the CWA and as a wholly new permit program. This proposal would require states (or the EPA) to establish Good Samaritan permit programs that would be approved by the EPA and that would include details about cleanup plans as well as other issue similar to what was included in the CWA Good Samaritan permit program.

However, this proposal also included very broad liability waivers for Good Samaritans for essentially all federal, state and local environmental laws and regulations. It also did not address a number of issues that were extensively negotiated under the CWA Good Samaritan permit legislation, and in some cases, such as re-mining, included provisions that were at odds with compromises previously reached.

Nevertheless, such a "stand-alone" Good Samaritan permit approach could be pursued. However, it would require further negotiations to address the broad environmental waiver provision, the re-mining provision, and other issues to garner wider consensus.

d. Brownfields Program

Some abandoned mine sites have been addressed through the Brownfields program, which provides funding and technical assistance to cleaning up contaminated sites for beneficial uses. Although this program could be of use to potential Good Samaritans, it does not address or provide protection to Good Samaritans from potential liability under the CWA and other issues associated with such work. As a result, if this approach were to be explored, the law would need to be amended to include Good Samaritans who do not wish to develop the land further and thus do not have the resources or interest in the long-term maintenance and operation of any necessary treatment systems.

e. Federally Permitted Releases

Current law provides a number of instances where a water discharge is exempt from the full CWA requirements. However, these exemptions are typically connected with an NPDES permit. As a result, even if this approach were to be pursued for Good Samaritan purposes, current law would need to be amended so as to make it clear that an ongoing discharge from a site where cleanup was performed by a Good Samaritan and an NPDES permit does not apply, that the discharge was a "federally permitted release" and thus not subject to other legal liabilities and requirements.

Conclusion

No matter what approach is selected to establish a Good Samaritan program to encourage greater cleanup of abandoned hardrock mines, efforts to develop consensus on the scope of the problem and the specific solutions to address those problems will need to occur.

Most agree that these sites do create ongoing concerns, risks and threats. The current laws and regulations, although critically important in protecting human health and the environment, are not fully adequate in addressing this particular problem. Most laws and regulations work best when a specific entity can be identified—and has the resources—to comply with requirements. In the case of abandoned hardrock mines, there isn't anyone to keep "on the hook." But there are plenty of interests and entities that have the capacity and ability to prove assistance—if they are not treated as "owners" of these sites and thereby must face the sorts of legal requirements and liabilities of such owners.

This is not a failure of these laws—it is a situation where good laws and intentions work to discourage other good intentions.

Adjusting these laws, regulations and policies in light of this reality should be attempted. However, that attempt should be conducted is a spirit of collaboration and consensus. As most want the same thing—to promote voluntary cleanup of abandoned hardrock mines and thereby improve water quality—all interests should be able to come together and negotiate a program that can be effective.

Keystone Policy Center is willing to work with all sides in that spirit with the hope of achieving a legislative solution that can garner wide support. Again, thanks for convening this important hearing and I hope it leads to productive discussions and solutions.

October 21, 2015

Testimony of Trout Unlimited on the House Transportation and Infrastructure Committee's Water Resources and Environment Subcommittee hearing on: **Abandoned Mines in the United States and opportunities for Good Samaritan Cleanups.**

Chairman Gibbs, Ranking Member Napolitano, and Subcommittee Members:

My name is Chris Wood. I am the President and CEO of Trout Unlimited. Thank you for the opportunity to testify today on this important and timely issue.

I offer the following testimony on behalf of Trout Unlimited and its 155,000 members nationwide. My testimony will focus on the cleanup of abandoned mine lands, specifically the need to facilitate abandoned mine cleanups by Good Samaritans—those who have no legal obligation to take on an abandoned mine cleanup, but wish to do so in order to improve water quality. We deeply appreciate the Subcommittee's attention to the issue, and we urge the Subcommittee to work with us and other stakeholders on a Good Sam bill to help provide a badly needed tool to facilitate cleanups.

TU's mission is to conserve, protect and restore North America's trout and salmon fisheries and the watersheds they depend on. In pursuit of this mission, TU has worked to restore streams and rivers damaged by pollution from abandoned mines from the Appalachian coal fields in Pennsylvania to the hardrock mining areas of the Rocky Mountain States, and my testimony is based upon these experiences.

Two century's worth of problems and solutions – A Short Summary

The three million gallon August spill of polluted water from the Gold King mine near Silverton Colorado showed the world what TU members and staff who live in mining country see every day: orange, polluted water, from abandoned mines. For several scary days, downstream communities in Durango, tribes, and river users in the Animas River—faced the loss of access to the river, damaged river-based economies, and threats to agricultural and drinking water. Thankfully, this spill was not as severe as it might have been and the river has returned to pre-spill conditions, but the long term impacts still need to be monitored carefully, and EPA and other stakeholders must apply "lessons learned" from the disaster to future cleanups.

The Gold King accident received extensive media coverage. What is less well-known is that there are thousands of similar, smaller scale abandoned mines that pollute our rivers and streams every day. The lesson from Gold King is not that an EPA contractor screwed up, it is that we need a much greater sense of urgency about addressing the problem of pollution from abandoned mines.

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Cleaning up abandoned mines is a difficult issue. Mining has played, and continues to play, an important role in the economic and social well-being of many communities around the country.

However, mining's legacy -- more than 500,000 abandoned hard rock mines in the American West with an estimated cleanup cost ranging from $36-72 billion -- has persisted for the better part of a century with little progress toward a solution. According to the EPA, abandoned hard rock mines affect 40 percent of headwaters in the western United States. The lack of dedicated funding sources and burdensome liability risk for would-be Good Samaritans has hindered abandoned hardrock mine cleanups.

In the East, abandoned coal mines dot the Appalachian landscape. Pollution from abandoned coal mines continues to damage thousands of miles of streams and rivers -- over 10,000 miles just within Pennsylvania and West Virginia -- and while much has been accomplished through the Surface Mining Control and Reclamation Act's extremely valuable Abandoned Mine Lands Fund (AML), a great deal more remains to be done. The cost of cleanup in Pennsylvania alone has been estimated as high as $15 billion.[1]

The production of coal is taxed in this country. Part of that funding supports an Abandoned Mineland Fund (AML Fund). Since 1977, more than $8 billion has been put to good use cleaning up and making safe abandoned coal mines. Unfortunately, no similar fund exists to clean up the legacy of hardrock mining, particularly in the western U.S.

With hundreds of thousands of abandoned hardrock mines and cleanup costs in the billions, and with a lack of a dedicated funding source for hard rock mine cleanup, the challenge is daunting. But sportsmen and women are hopeful by nature, and we have set out to tackle this task with the same enthusiasm that we bring to fishing, hunting, and other resource conservation work that we do. If a "journey of a thousand miles begins with a single step," the good news is that we and our partners have taken a number of strong steps already.

We have developed a number of model projects that can be easily replicated. In Pennsylvania, aided by state-based Good Samaritan policy, Trout Unlimited is working with State agencies, watershed groups and other partners, to conduct more than 250 abandoned coal mine pollution projects throughout the state. And Trout Unlimited, again in partnership with state and federal agencies and private landowners, has used the limited Good Samaritan tools afforded by EPA under current law to good effect.

Across the country, we are working in local communities to leverage the resources that are available to restore rivers and streams that are impacted by abandoned mines. This work demonstrates the positive affect that dedicated Good Samaritans can have on local waters, as well as the limitations placed on Good Samaritans as a result of liability concerns under the Clean Water Act. Although projects by TU and others have addressed only a tiny fraction of the overall problem, each project has substantially restored the health of a particular river or stream.

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[1] http://pa.water.usgs.gov/projects/energy.amd.

These projects represent significant local victories, and also provide lessons on Good Samaritan restoration generally.

The following testimony is based on TU's experience with these projects, and will describe the work that has been done by Good Samaritans, the roadblocks to Good Samaritan cleanups, and our recommendations for how to facilitate abandoned mine cleanup in the future.

BARRIERS TO GOOD SAMARITAN ABANDONED MINE CLEANUP

Our tried and true pollution cleanup laws, the Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act (better known as "CERCLA"), place the burden of cleanup squarely on the owners of the property. Generally this is an excellent policy for most forms of pollution, but especially in the West, where the parties responsible for developing most of the old mine sites are long gone, and with current owners having little to no incentive to do any of the cleanup because of the liability from the laws, cleaning up these sites can be a legal quagmire.

A partnership between TU, western states, and EPA resulted in EPA policy that provides useful protection to Good Samaritans from CERCLA liability in 2007[2], but Clean Water Act liability has remained a significant obstacle.

CERCLA

When TU first started working on abandoned hard rock mines, there were liability concerns under CERCLA and the Clean Water Act that prevented many Good Samaritan projects from moving forward. CERCLA presented a significant barrier to Good Samaritan projects, both because the statute presents real risks for any party helping to clean up toxic wastes, but also because the statute's complexities and perceived risks are incredibly daunting for many watershed groups, local communities, and NGOs.

In 2006, TU completed a pioneering Good Samaritan cleanup in Utah's American Fork Canyon that overcame CERCLA liability concerns with the help of EPA, the Forest Service, and the state of Utah. The liability protection document (an Administrative Order on Consent, or "AOC") negotiated with the EPA for the American Fork work led to the issuance of EPA guidance and model documents for dealing with CERCLA liability protection for future Good Samaritans to use in similar projects.

TU has now negotiated three separate AOC's with EPA covering two different projects—one project on the American Fork in Utah (two AOC's for different phases of the project) and another on Kerber Creek in Colorado. We greatly appreciate the work that EPA has put into their model AOC for Good Samaritan cleanups, and the work that EPA staff have put into negotiating the specific AOC's for TU. Though there remains room for improvement, the

[2] http://water.epa.gov/action/goodsamaritan/

AOC's have helped to remove one of the major impediments that have prevented communities, watershed groups, conservation organizations, TU chapters, and others from undertaking abandoned mine cleanup projects.

Clean Water Act

There are many projects where water quality could be improved by collecting run-off, or taking an existing discrete discharge, and running the water through either an active or passive treatment system. However, for would-be Good Samaritans, Clean Water Act (CWA) compliance and liability issues remain a barrier to such projects. A number of courts have held that discharges from systems that treat wastewater from abandoned mines are point source discharges that require a National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the CWA. Although EPA and some eastern states have not considered such projects to be point sources requiring NPDES permits, the Fourth Circuit's 2010 decision in *West Virginia Highlands Conservancy, Inc. v. Huffman* (discussed more below) creates some uncertainty around that approach.

Stakeholders in projects involving treatment of wastewater have balked because of CWA liability for two reasons. First, NGOs, including TU, are not well suited to apply for and hold permits for such projects. TU does not have an adequate funding mechanism to legally bind itself to pay for the perpetual costs associated with operating a water treatment facility and permit compliance. Typically, NGOs implement Good Samaritan projects through specific grants provided by government agencies, individuals, private foundations, and other donors. Although such grants often include funding for future monitoring and maintenance, nonprofit groups do not have funding for major improvements to a system should those improvements be needed to comply with a permit. As a result, the liability risk associated either with complying with a permit, or building a system without a permit, represents a completely unfunded risk that could threaten the financial health of the organization.

Second, for many projects it may be impossible to obtain a permit, because the treatment systems may not be able to treat abandoned mine wastewater to a level that meets all applicable water quality standards or other applicable criteria. It should be noted that while these treatment systems are certainly capable of producing water that will support a healthy fishery, water quality might not meet CWA standards; the would-be Good Samaritan is on the hook to make sure it does. It is possible to spend $X to clean water to 90 percent of the CWA standards, resulting in significant benefits for communities, fisheries, and aquatic systems. But the increment needed to get to 100 percent of the Clean Water Act standard may be $5x.

This is not to say that CWA standards should be weakened; just the opposite, in fact. But there should be incentives for would-be Good Samaritans to make water cleaner even if still short of full CWA standards.

It is also sometimes difficult to predict in advance the results that a given treatment system will achieve. Although one can know in advance that a project will produce a significant improvement in water quality, one cannot always know the exact treatment level it will achieve for every parameter until the treatment system has been in operation for some time. Finally, many of these projects are built in remote mountain areas where access for monitoring and maintenance is very difficult. These projects are not well suited for traditional NPDES permits that require monitoring for and compliance with detailed numeric criteria.

SOLUTIONS ARE NEEDED TO SUPPORT GOOD SAMARITAN RESTORATION

Good Samaritan projects need a permit mechanism, such as the type of permit contemplated by legislation previously introduced by Representative Tipton and Senators Udall and Bennet in the 113th Congress (H.R. 2970; S. 1443) that requires the project to produce significant improvements in water quality for a specific period of time, implement best design and management practices, and conduct appropriate monitoring, but not expose the Good Samaritan to liability if the project at some point fails to achieve a required criterion for a given pollutant.

Cleanup opportunities have been missed because of the lack of such a Good Samaritan policy. For example, the sulfate-reducing bioreactor phase of the Tiger Mine Restoration Project near Leadville, CO, a proposed project in the headwaters of the Lake Fork of the Arkansas River, is on hold. Though other portions of this project have been successful in stabilizing and conveying adit discharge, the sulfate-reducing bioreactor would be another downstream option to treat the acid mine drainage coming from the tunnel. The planned bioreactor is designed to address the low pH and high metals concentrations that are causing the Lake Fork of the Arkansas to be contributing significant metals loading to one of Colorado's most treasured fisheries, the Arkansas River. Despite the fact that the project would dramatically improve water quality, TU and its partners cannot proceed without liability protection under the Clean Water Act.

Colorado's Upper Animas River, once a shining example of the benefits of abandoned mine cleanup and now known worldwide for the Gold King spill, also demonstrates the limits placed on Good Samaritans under the Clean Water Act. The Animas River Stakeholders Group (ASRG) was instrumental in partnering with state and federal agencies since the 1990s to clean up abandoned mines and restore water quality in the Animas River, which resulted in the reestablishment of an outstanding trout fishery downstream in Durango. Today, however, we are losing ground in the fight against abandoned mine pollution in the Animas, and a number of necessary restoration projects are held up by CWA liability concerns.

In short, any entity that constructs a bioreactor or other similar treatment system becomes liable for that discharge in perpetuity under the Clean Water Act. Understandably, this is a risk that the Tiger Mine project partners are not willing to take even though a study of a bioreactor has been completed, the site has been prepared, and several sources of funding have been secured

TU has worked with the EPA to address these challenges, and we appreciate the efforts the agency has made to help us and other would-be Good Samaritans. In December of 2012 the

EPA issued a guidance memo designed to clarify how the Clean Water Act applies to Good Samaritan abandoned mine cleanup projects. The guidance memo requires potential Good Samaritans to fully comply with the 2007 Superfund policy, but allows eligible Good Samaritans to avoid CWA requirements under certain circumstances.

Several years of experience now indicate that the restrictions in the guidance memo may not be a good fit for the type of work that is needed. Nonetheless, we are pleased that EPA is making abandoned mine cleanup a higher priority, and we are eager to explore ways to increase our work with EPA at sites around the West. In spite of this progress, the Clean Water Act remains a barrier to cleanups at the Tiger Mine and Upper Animas, and similar projects elsewhere. Federal legislation is needed to provide permitting authority to facilitate these and other cleanups in a way that provides clarity and certainty to Good Samaritans.

Western Hard Rock Mines and Eastern Coal Mines; Similarities and Differences

Eastern coal mines are not subject to the CERCLA liability, but a recent court decision has extended the Clean Water Act liability concerns that have long plagued the West to the Eastern coal fields. In *West Virginia Highlands Conservancy v. Huffman*, 625 F. 3d 159 (4th Cir. 2010), the Fourth Circuit held that facilities run by the state of West Virginia to treat water pollution coming from abandoned coal mines met the definition of a point source under the CWA. In addition, the court held that the state was the operator of those facilities and therefore needed a permit under sections 301 and 402 of the CWA. The decision has introduced some uncertainty regarding how the CWA applies to projects that treat acid mine drainage from abandoned coal mines in Pennsylvania and other eastern states. But the contrast between what is occurring to clean up abandoned coal mines in the East and what is happening in the West, especially in terms of use of active and passive treatment facilities, is striking.

In Pennsylvania, as we explain below, polluted water is being successfully treated and streams and rivers are being brought back to life, because the Commonwealth has provided Good Samaritans with dedicated funding and at least limited liability protection via state Good Samaritan law. The Pennsylvania model is precisely what we need to export to the hardrock mine pollution problems of the West.

WHY GOOD SAMARITANS?

There are numerous citizen groups that have formed in this country for the purpose of protecting, conserving and enhancing the natural resources of their local communities. They work collaboratively with government agencies and landowners to develop solutions to complex watershed problems. The following are some examples of the good work that is occurring.

By using the CERCLA liability protection and avoiding projects that trigger Clean Water Act liability, and with the support of the Tiffany & Co. Foundation, Freeport-McMoRan Copper & Gold, Inc., and other partners and supporters, TU has made substantial progress in cleaning up abandoned mine impacts in several watersheds in the West.

American Fork, Utah. The Pacific Mine cleanup in the American Fork Canyon was the first voluntary, non-profit-led abandoned hardrock mine restoration project in the West. TU and its partners received awards from the Utah Board of Oil, Gas and Mining and the EPA for work on the American Fork. Anglers can now catch Bonneville cutthroat trout immediately downstream of the area where pollution used to run off mine tailings piles.

Mores Creek, Idaho. To date, over 14,000 cubic yards of mine tailings have been removed from the banks of Mores Creek to create a more natural floodplain area, and trees planted along the stream will provide critically needed shade for coldwater fish. Hundreds of schoolchildren from the area have participated in tree plantings and other restoration work. Migratory fish are now seen using instream habitat structures installed as part of the restoration effort.

Kerber Creek Watershed, Colorado. In total, TU and its partners restored over 80 acres of mine tailings, improved 8 miles of stream, and installed over 340 instream structures that are now home to a reproducing brook trout population. Volunteers logged over 13,000 hours of work in the watershed over the past three years. The restoration project has received four prestigious awards: the BLM's *Hardrock Mineral Environmental Award*, the Colorado Riparian Association's *Excellence in Riparian Area Management Award*, the Rocky Mountain Region of the USFS's *Forest and Grassland Health Partner of the Year*, and the Public Lands Foundation's *Landscape Stewardship Award*.

Leavenworth Creek Watershed, Colorado. In 2015, TU and Federal partners removed and capped 5,400 cubic yards of mill tailings containing high levels of zinc and lead, while constructing 2,500 feet of rip rap channel through a dispersed tailings area adjacent to the Waldorf Mine. Removing the mill tailings, creating a vegetated floodplain, and establishing a rip rap channel will allow for the conveyance of clean surface water runoff to Leavenworth Creek. This is an important step in improving water quality to downstream South Clear Creek, which acts as the drinking water source for the town of Georgetown, CO.

Clark Fork River Basin, Montana. TU and partners have reclaimed four mine sites in the Middle Clark Fork River and have six ongoing mine reclamation project in the planning and design phases. For example, on Mattie V Creek TU and its partners removed 12,000 cubic yards of dredge tailings and reclaimed 500 feet of stream channel reclamation project. Fish are now swimming up Mattie V Creek from Ninemile Creek for the first time in 80 years. Because of these and other accomplishments, the TU project manager in Montana was awarded with the American Fisheries Society's Individual Achievement Award and the US Forest Service's Rise to the Future Award in 2010.

Kettle Creek, Pennsylvania. Our experiences in Pennsylvania, where Clean Water Act liability has historically not been a concern, is illustrative of the positive affect of Good Samaritan cleanups. Over the last 10-15 years, Pennsylvania has seen a dramatic increase abandoned mine reclamation projects by watershed groups, including TU. This boom has been fueled by funding

from the state's Growing Greener grant program and the federal Abandoned Mine Land (AML) reclamation fund. Most of these projects involve treatment of acid mine drainage using passive treatment systems, which run the polluted mine drainage through a series of limestone basins and wetlands that increase the water's pH and cause heavy metals to precipitate out. These projects have significantly improved water quality and restored fish populations in numerous Pennsylvania streams.

The Pennsylvania Department of Environmental Protection estimates that public funding sources have paid for the construction of nearly 250 passive treatment systems in state, the majority of which have been constructed by private watershed groups, conservation districts, or other local groups. According to DEP, local groups are currently responsible for operations and maintenance on "hundreds" of passive treatment systems in the state.

The story of recovery plays out in individual streams and watersheds. In Pennsylvania, the Babb Creek Watershed Association accomplished delisting 14 miles of Babb Creek, now a wild trout fishery, from EPA's impaired streams list. Together with the Kettle Creek Watershed Association, TU celebrates the recovery of native brook trout to two previously lifeless streams in the lower Kettle Creek watershed. On a much larger scale, the West Branch Susquehanna River watershed has made tremendous strides over the past few decades. A comparison of conditions in the West Branch Susquehanna in 1972 with those in 2009 indicated that fish species increased 3,000%, and pH increased from 3.8 to 6.6.

These improvements result in economic benefits. In Pennsylvania, almost $4 billion was spent on fishing, hunting, and wildlife viewing in 2006. A 2008 study found that full remediation of the West Branch Susquehanna River watershed would result in "an additional $22.3 million in sport fishing revenues could be expected to be generated each year. Additional recreation spending—over and above that for fishing—would be expected after remediation is completed."[3]

Regardless of the overall scope of the abandoned mine problem, each of these Good Samaritan projects restored a significant water body and represents a big win for the local community.

RECOMMENDATIONS

There are two main ingredients for effective abandoned mine pollution cleanups: (1) well-designed liability protection for Good Samaritans involved in cleanup efforts, and (2) increased, dedicated funding to get the job done.

1. Liability Protection Needed for Good Samaritans

There are potentially two paths to addressing liability issues for Good Samaritans. The first is to identify a mechanism under existing law that would facilitate Good Samaritan projects. The

[3] Evan Hansen, Alan Collins, Julie Svetlik, Sarah McClurg, Alyse Shrecongost, Rob Stenger, Mariya Schilz, and Fritz Boettner. *An Economic Benefit Analysis for Abandoned Mine Drainage Remediation in the West Branch Susquehanna River Watershed, Pennsylvania.* Downstream Strategies, LLC. July 3, 2008.

EPA CECLA guidance described above is a positive step that may clear the way for more Good Samaritan cleanups, but remaining concerns about Clean Water Act liability continue to prevent Good Samaritans from completing some much-needed projects.

The uncertainties regarding the extent of current administrative authorities under CERCLA and the Clean Water Act should also be addressed by new legislation that provides a workable pathway for Good Samaritan abandoned mine cleanups.

Good Samaritan Legislative Concepts

Based on our experience, we offer the following concepts for the Subcommittee's consideration. As I hope I am making clear, Trout Unlimited sees a strong need for such legislation. But the legislative work must be approached carefully. If the laws are complex, the problems posed by mine pollution are often equally complicated. Remediation work is often site-specific, technically challenging, and as the Gold King mine spill showed, there are substantial risks if accidents occur—even in well-intentioned field work.

The four most important lessons we have learned are as follows:

1. Good Samaritan protections should extend only to Good Samaritans—companies, communities, and organizations that have no historic interest in, or connection to, relevant abandoned mines;
2. The more narrow and targeted the Good Samaritan approach to the mine pollution problem, the better; and
3. The more we can build on current laws and administrative policies that have worked on the ground in the past, the better, again in terms of actually getting things done on the ground.
4. The lack of a dedicated cleanup fund for hard rock abandoned mines is a crucial limiting factor to expanding abandoned mine cleanups.

Tipton/Udall/Bennet bill (H.R. 2970; S. 1443), 113th Congress

The Tipton/Udall/Bennet bill from the 113th Congress (H.R. 2970; S. 1443) is a good approach. Its legislative concepts have been refined over the course of several Congresses, and have received scrutiny through several hearings. The primary feature of the bill is a well-thought-out permit program, grounded fully within the well-established confines of the Clean Water Act's Section 402 point source discharge program. A new version of the Tipton/Udall/Bennet bill is a good option.

Salazar/Allard (S.1848), 109th Congress

We know that S. 1848 from the 109th Congress, a bill authored by then Senators Salazar and Allard, is being considered for introduction now. Although we supported it at the time, our view today is that it is overly broad for contemporary needs.

When S. 1848 was being developed, there was no administrative option available from the EPA, and Trout Unlimited was ramping up its efforts on the ground to do mine pollution work. We needed a legislative solution. TU worked very hard on the bill, and following some major compromises from a number of stakeholders, the bill was approved by the Senate EPW committee. However, it never advanced, in part because of the substantial criticism it took for being overly broad in its liability exemptions from a number of federal, state, and local laws. Simply put, it is broader and less targeted than is necessary to get Good Samaritan work done.

The bill does have good features, and appropriate changes to the old bill might make it a useful option. Most of the permitting mechanism is fine and workable. We like the bill's fundamental permitting standard—projects are required to meet applicable water quality standards to the maximum extent reasonable and practicable— which is quite similar to the standard in the Tipton/Udall/Bennet bill. Another positive feature is that projects are eligible for Clean Water Act Section 319 funding.

CERCLA-based Concept

We agree that there is another concept worth exploring wherein a new bill would make small changes to CERCLA to allow the CERCLA permit shield to cover Clean Water Act liability in a targeted fashion. The Colorado Attorney General's office is making good progress on developing such an option, and a number of stakeholder groups believe that this concept could work. Trout Unlimited urges Congress to give this option strong consideration.

Lastly, whatever the legislative vehicle might be, we urge Congress to provide Good Samaritan protection for both coal and hardrock abandoned mine cleanups. Since the on the ground problems and their solutions are so similar, such a confluence of eastern and western interests is a good strategic stroke.

In examining these bills, it is important to recognize the unique nature and benefits of Good Samaritan projects, and the specific ways they need a tailored regulatory approach. Good Samaritan projects are typically smaller and less technically ambitious than large Superfund cleanups. They target polluted areas where a specifically identified and discrete series of projects can improve water quality to a threshold where fish and other aquatic life can return. Finally, they are often conducted by nonprofit groups, such as Trout Unlimited, that do not have a large reserve of funds or insurance to deal with the long range financial risk and commitment typical in the CERCLA context. As a result, Good Samaritan projects require a permitting and compliance approach that identifies a discrete series of actions or projects, confirms that the desired actions will improve environmental quality to the greatest extent feasible, and limits long-term, open-ended liability and financial risk after permitted actions have been implemented and the environmental goals have been achieved.

2. **Increased, Dedicated Funding: Abandoned Mine cleanup work needs funding**

I am sure the Subcommittee hears about funding needs at every hearing, from nearly every witness. I wouldn't be doing my job at this hearing unless I highlighted the need. But I hope it is clear to the Subcommittee, that even if a perfect Good Samaritan bill is approved and implemented, the work will not get done without adequate funding. Here are several important steps Congress should take to fuel good abandoned mine cleanup work:

Reauthorize Title IV AML for coal. The AML fund is the lifeblood of funding for abandoned coal mining work in the coal field areas of America, especially the East. Congress passed a very useful 15 year reauthorization for the AML fund in 2006. Trout Unlimited, states, and other stakeholders urge Congress to get started on the task of reauthorization now to ensure a smooth reauthorization is achieved by 2021. Such a valuable, complex law is worth the effort needed to make sure the critical funding is maintained.

Provide funding for hard rock mine cleanup on federal lands: Some of the very best work that has been done on abandoned mine cleanups has occurred on western federal lands. Congress has provided several million dollars each to the BLM and Forest Service for this work. These agencies have proven to be excellent partners on this task. We urge Congress to maintain funding for abandoned mine cleanups on federal lands.

Provide a dedicated source of funds for abandoned hardrock mining cleanups: Congress should establish a fair royalty from any minerals taken from public lands, a portion of which should be invested in an abandoned hardrock mine cleanup fund. Almost every commodity developed off public lands--coal, wood fiber, oil, gas, and forage— has dedicated funding for mitigation of impacts and restoration. The only commodity that lacks such a dedicated fund is hard rock minerals. Representatives DeFazio and Grivalva have developed 1872 Mining Law reform bills which contain this type of provision.

Review possible changes to section 319 of the Clean Water Act: The Subcommittee should take a look at Section 319 of the Clean Water Act to see whether there are changes to be made, in full consideration of the needs of the state partners, of course, that could get more abandoned mine cleanup work done.

Congress should consider authorizing a private/public fundraising foundation, similar to the National Fish and Wildlife Foundation, for the purpose of funding abandoned mine cleanup. Such a move would cost very little, but might prove extremely valuable in leveraging private sources of funding for cleanup. The valuable donations Trout Unlimited has received from mining companies and the Tiffany & Co., Foundation have been leveraged on a more than 5:1 basis to provide for western cleanups. These donations show that such a program might be beneficial. It seems like a win-win concept that could secure bipartisan support.

CONCLUSION

Thank you for considering our views, and thank you for working with us on this important matter.

We strongly urge you to work together to develop and introduce a strong, bipartisan bill as soon as possible. A bipartisan approach would greatly enhance the prospects for passing a bill – and the sooner a bill is passed in to law, the sooner we get to work to clean up mine pollution. We stand ready to work with you to get such a bill introduced and on a track to move through Congress so that affected communities around the country will again have clean, fishable waters.

EARTHWORKS

Testimony of Lauren Pagel
Policy Director, Earthworks
Testimony before the U.S. House Subcommittee on Water Resources and Environment Hearing on Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups
October 21, 2015

Thank you Chairman Gibbs, Ranking Member Napolitano and Members of the Subcommittee for the opportunity to speak with you today about reclaiming abandoned hardrock mines and Good Samaritan policy.

Earthworks is a non-profit organization dedicated to protecting communities and the environment from the destructive impacts of mineral and energy development. For over a quarter century, we have worked closely with a broad coalition of local governments, Native Americans, citizen groups and other conservation organizations to improve the policies governing hardrock mining, including abandoned mine reclamation.

In the wake of the August 5th Gold King Mine disaster, which spilled million gallons of acid mine drainage into a tributary of Colorado's Animas River, communities who live with the threat of old mines are demanding solutions. In the near term, the community impacted by the Animas River spill needs a permanent water treatment facility and immediate compensation for losses.

But the apparent influx of abandoned mine waste into the Uncompahgre River that occurred a little over a week ago highlights the fact that this problem is not limited to the Gold King Mine. It is nationwide, focused on the west.

In order to solve the nationwide problem of perpetual pollution from inactive and abandoned hardrock mines, we must reform the 1872 Mining Law and institute a reclamation fee similar to the one paid by the coal industry.

Good Samaritan initiatives that do not include a dedicated and significant funding source are little more than a distraction from the real problem facing western communities and water resources. Complicated, expensive clean ups like the Gold King Mine require a dedicated cleanup fund with significant resources, not a Good Samaritan. If the 1872 Mining Law had been reformed years ago, and an abandoned mine reclamation fund created, Silverton, Colorado would have been able to clean up surrounding old mines years before they became a catastrophic threat without branding itself a Superfund site.

Old Mines Pollute Western Waters

1612 K ST. N.W. / SUITE 808 / WASHINGTON, DC 20006 / P 202 887 1872 F 202 887 1875 / WWW.EARTHWORKSACTION.ORG

In the early 1990's, Earthworks assessed the scope of the abandoned mine problem estimating that the United States has over 500,000 abandoned hardrock mines. To date, there is still no comprehensive inventory of abandoned hardrock mines, no system to prioritize the most dangerous of these mines are prioritized for cleanup, and almost no funds to clean up these sites. According to the Environmental Protection Agency (EPA), estimated cleanup costs total approximately $50 billion dollars.
Western communities face significant burdens associated with these old mines. At least 40% of the streams feeding the headwaters of Western watersheds are polluted from mining. That's because many mines -- like Gold King -- have significant acid mine drainage problems, which can persist for thousands of years if left untreated.

Abandoned uranium mines pose the added threat of radiation exposure. The EPA estimates there are at least 4,000 abandoned uranium mines in the 14 western states. Uranium mining produces radioactive waste in addition to the heavy metals found in most hardrock mine waste. Continued exposure to radioactive materials such as radium and thorium has caused serious health problems for those living nearby.
In states like Montana—where state severance tax revenues and SMCRA federal funds are available for use — there is a small stream of monies to remediate only a few sites a year. In other states, there are few sources of funds available to correct this pervasive problem in old mining districts. As a result, the number of abandoned mines that cause safety or environmental hazards far outweigh the funding available to reclaim them.

The single largest obstacle to the restoration of abandoned hardrock mines is the lack of an independent and significant funding source for clean up. The antiquated 1872 Mining Law currently allows mining companies to take hardrock minerals from public lands for free. The lack of any payments for federal minerals taken from public lands has brought us to where we are now -- hundreds of thousands of unreclaimed, polluting mines and no resources to clean them up.

By contrast, the Surface Mining Control and Reclamation Act (SMCRA) requires the coal industry to pay both a royalty and a reclamation fee. That reclamation fee funds an Abandoned Mine Reclamation Fund which pays to clean up old coal sites across the country. The hardrock mining industry pays no such fee. In fact, in some states, the coal industry's fund goes to clean up the messes of the hardrock mining industry.

If the hardrock mining industry had been subject to a SMCRA-like law from 1977 until now, paying a fair royalty for the minerals they take from public lands and putting funds into a reclamation program, the Gold King Mine spill likely would not have happened. An independent, long-term funding source for hardrock abandoned mine cleanup, similar to the SMCRA program, is long overdue and the only way to deal scope of the problems western states face from abandoned mines. There is no other solution to our abandoned and inactive mine problem than an industry-funded reclamation program.

Good Samaritan Policies Won't Solve the Problem

The pollution from abandoned mines continues despite an existing clear administrative process for Good Samaritans to help clean up these sites. Civic, religious, and conservation organizations do perform cleanup activities that have improved conditions and water quality at some old mines.

The EPA has created a process through which qualified projects can receive what is effectively a Good Samaritan permit. Applicants need only receive an Administrative Order on Consent from EPA to become a Good Samaritan and earn liability waivers from the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act or Superfund. Earthworks supports this process and has supported several legislative proposals in past Congresses that create narrow exemptions from Clean Water Act liability.

But asking Good Samaritans to clean up old mines, either through an administrative process or via legislation, will not and cannot fully address the hundreds of thousands of old mines that currently threaten our safety and clean water. Unfortunately, there are many other ticking time bomb old mines out there just like the Gold King Mine -- messy, complicated and incredibly expensive to clean up. Even the temporary water treatment plant at the Gold King Site will cost $1.78 million to set up, and $20,000 a week to operate.

Without funds at their disposal, Good Samaritans can tackle some small projects that may improve water quality. But, Good Samaritans can do nothing to help tackle these larger problem sites --- that must be done by skilled reclamation professionals with monies from a dedicated clean up fund.

A Hardrock Mining Reclamation Fund: Millions of Jobs, Cleaner Water

According to data from the State of Montana abandoned mine lands program , each million dollars spent on clean up creates 81 jobs. In addition to job creation, restoration activity puts degraded lands into productive use and grants relief to communities currently shackled with excessive costs for water treatment of pollution from abandoned mines.

The Obama Administration's FY2016 budget proposes a reclamation fee on all hardrock mining, similar to the fee paid by the coal industry. This fee would generate an estimated $180 million per year to fund abandoned mine restoration, creating an estimated 14,580 jobs annually for those in the mining industry. In addition to a reclamation fee, a royalty, also similar to what is paid by the coal industry, could generate an additional $410 million over 10 years, allowing us to spend over $2 billion dollars by 2025 on much-needed clean up, with over 175,000 jobs created.

Congressman DeFazio, Congressman Grijalva, Congressman Lowenthal and others have introduced legislation that would bring us closer to ensuring that the Animas mine disaster does not happen again. HR 963, the Hardrock Mining Reform and Reclamation Act of 2015, would facilitate the clean up of abandoned hardrock mines while creating tens of thousands of reclamation jobs across the west far into the future. This bill modernizes the antiquated 1872 Mining Law by balancing mining with other land uses, ensuring a fair royalty return for taxpayers, and creating a reclamation fee of seven cents per ton on mining waste.

Creating a dedicated, significant, stream of funding is the only way to fully address the problem of cleaning up over half a million abandoned hardrock mines. Without this funding, state, local and tribal governments and citizen groups can only clean up a small number of mines. And without the funding to comprehensively inventory and prioritize

abandoned/inactive mines, they would do in the dark. Tackling this large-scale problem requires a large-scale solution. One that will both create jobs and restore western waters.

Thank you for the opportunity to present the views of Earthworks on this important topic and we look forward to working further with the Committee to address the real problem that abandoned mine sites pose to air, water and public safety in western states.

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WESTERN GOVERNORS' ASSOCIATION

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Governor of Montana
Vice Chair

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Fax 202-624-7707

www.westgov.org

October 20, 2015

Honorable Bill Shuster
Chairman
House Committee on Transportation and Infrastructure
2251 Rayburn Office Building
Washington, D.C. 20515

Honorable Peter D. DeFazio
Ranking Member
House Committee on Transportation and Infrastructure
2164 Rayburn Office Building
Washington, D.C. 20515

Dear Chairman Shuster and Ranking Member DeFazio:

On behalf of Western Governors, we note that the Subcommittee on Water Resources and Environment scheduled the "Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups" hearing for October 21, 2015. This is an important issue for many Western states, and we are pleased to convey the Governors' position on liability issues associated with abandoned mines.

Governors respectfully request that Western Governors' Association (WGA) Policy Resolution 2013-05, *Cleaning Up Abandoned Mines in the West* be included as part of the hearing record.

The importance of addressing abandoned mine cleanup was illustrated on August 5, 2015, when the Environmental Protection Agency (EPA) was investigating the Gold King Mine near Silverton, Colorado. Excavation at the mine site resulted in a spill of about three million gallons of wastewater and tailings into Cement Creek, a tributary of the Animas River. The contaminated water traveled through Colorado, New Mexico, Utah and the lands of the Navajo Nation and Southern Ute Tribe. The wastewater and tailings included heavy metals such as cadmium, lead and other toxic elements, including arsenic. The long-term impacts of the spill remain unknown.

We appreciate the renewed interest of Congress in tackling this difficult issue. Please consider the Western Governors – through the WGA – as a resource as you proceed with your important work on this and other matters affecting the American West.

Thank you for your leadership on this critical Western issue.

Sincerely,

Matt Mead
Governor, State of Wyoming
Chairman, WGA

Steve Bullock
Governor, State of Montana
Vice Chair, WGA

Attachment

cc: Honorable James Inhofe, Chairman, Senate Committee on Environment and Public Works
Honorable Barbara Boxer, Ranking Member, Senate Committee on Environment and Public Works
Honorable Fred Upton, Chairman, House Committee on Energy and Commerce
Honorable Frank Pallone, Ranking Member, House Committee on Energy and Commerce
Members, House Committee on Transportation and Infrastructure
Members, Senate Committee on Environment and Public Works
Members, House Committee on Energy and Commerce

WESTERN GOVERNORS' ASSOCIATION

Western Governors' Association
Policy Resolution 13-05

Cleaning Up Abandoned Mines in the West

A. BACKGROUND

1. Mining has a long history in the West. The western states are rich in hardrock minerals like gold, silver and copper.

2. Cleanup of old abandoned hardrock mines is hampered by two issues -- lack of funding and concerns about liability. Both of these issues are compounded by the land and mineral ownership patterns in mining districts. It is not uncommon for there to be dozens of parties with partial ownership or operational histories associated with a given site.

3. Recognizing the potential economic, environmental and social benefits of remediating lands and streams impaired by abandoned hardrock mines, Western states, municipalities, federal agencies, volunteer citizen groups and private parties have come together across the West to try to clean up some of these sites. However, due to questions of liability, many of these Good Samaritan efforts have been stymied.

4. Potential liability exists for Good Samaritans under Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permit program because a party can inherit liability for any discharges from an abandoned mine site remaining after their cleanup efforts, even though the volunteering remediating party had no previous responsibility or liability for the site, and has reduced the water quality impacts from the site by completing a cleanup project.

5. Potential liability exists for Good Samaritans under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act).

6. Liability concerns also prevent mining companies from going back into historic mining districts and remining old abandoned mine sites or doing volunteer cleanup work. While voluntary remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for cleaning up abandoned mine sites.

7. In December 2012, EPA issued a memorandum to its regional offices the intent of which was to reduce the perceived Clean Water Act legal vulnerability faced by "Good Samaritans" who want to clean up their communities. EPA's memorandum clarifies that Good Samaritans who volunteer to clean up these abandoned sites are generally not responsible for obtaining a permit under the Clean Water Act either during or following a successful cleanup.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors commend EPA for issuing an instructional memorandum helping clarify CWA liability for Good Samaritan cleanups. We urge EPA to issue additional instructional memorandum to address potential liabilities related to CERCLA, RCRA and remining, including specific guidance for local and state governments.

2. To add greater certainty, Western Governors call on Congress to amend the Clean Water Act to legally protect volunteering remediating parties, including local and state government agencies, which conduct authorized remediation from becoming legally responsible under section 301(a) and section 402 of the CWA for any continuing discharges from the abandoned mine site after completion of a cleanup project, provided that the remediating party -- or "Good Samaritan" -- does not otherwise have liability for that abandoned or inactive mine site.

3. Legislative and administrative remedies to address potential CERCLA and RCRA liabilities should also be considered, as should liabilities associated with remining that deter the mining industry, likely the best suited industry in terms of equipment, technology and expertise, from improving conditions at abandoned mine sites.

4. As the costs to clean up abandoned hardrock mines are significant, the Western Governors support efforts by Congress and the Administration to encourage public-private partnerships that would facilitate cleanups by Good Samaritans.

C. GOVERNORS' MANAGEMENT DIRECTIVES

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.

2. WGA staff is directed to convey this policy resolution to the Congressional committees of jurisdiction, the Executive Branch and other interested parties as appropriate. WGA shall monitor developments on this issue and report to the Governors' staffs as developments warrant. WGA staff shall identify opportunities to advance the Governors' policy position that warrant further action by the Governors.

F:\13resos\aml.doc

R. John Dawes,
Executive Director
Foundation for Pennsylvania Watersheds

Branden S. Diehl,
CEO Earth Wise Consulting
On Behalf of Foundation for Pennsylvania Watersheds

Comments to:
SUBCOMMITTEE ON WATER RESOURCES AND THE ENVIRONMENT
of the
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

Oversight Hearing on Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups

October 21, 2015

R. John Dawes • *Executive Director*

Foundation for Pennsylvania Watersheds

9697 Loop Road, Alexandria PA 16611
Phone: 814-669-4244 - *Fax:* 814-669-1323
Email: Rjdawes1@verizon.net

www.pennsylvaniawatersheds.org

Dear Mr. Chairman:

The Foundation for Pennsylvania Watersheds (FPW) would like to thank you for the opportunity to provide comments on Good Samaritan Legislation. Our colleagues Eric Cavazza and Chris Wood will provide verbal and written testimony before your committee. The attached are written comments for consideration provided by FPW. Thank you for your concern about issues facing reclamation, and for your leadership in advancing solutions that will provide legal protection for those parties involved in the daunting task of restoring these environmental liabilities and creating opportunities for future generations.

Since 1995, FPW has assisted watershed groups, conservancies, and land trusts in addressing environmental degradation within the Commonwealth of Pennsylvania. Our investment of $11.3M in private funds has leveraged more than $159M in local, state, and federal funding. Of this investment, $2M has assisted in leveraging $49M for the purpose of abandoned mine drainage (AMD) reclamation.

Pennsylvania has many scars from the pre-Surface Mining Control and Reclamation Act (SMCRA) era. Current estimates are that Pennsylvania has more than 180,000 acres of denuded mine lands, and 5,500 miles of AMD impaired waterways. Pennsylvania's 5 th Congressional District is home to the most abandoned mine features in the nation.

With a renewed focus on reclamation, and the liabilities associated with mine cleanups we provide our thanks for your involvement in this timely and critical need—addressing Good Samaritan efforts.

Sincerely,

R. John Dawes,
Executive Director

Branden S. Diehl,
Consultant

In 1999, the Pennsylvania legislature passed unprecedented legal protections for those completing reclamation work within the Commonwealth. Under Act 1999-68's *Chapter 81 Good Samaritan* the state acknowledged the importance in limiting liability to those completing environmental projects. Much like by-standers and emergency medical personnel are granted liability exemptions for intervening as First Responders, this legislation acknowledge the risk associated with watershed groups completing restoration. Specifically, the state noted that the enormity of environmental needs was beyond the capacity of government to resolve, and that degraded lands negatively impact the state's economy.[1] Further, the state noted a desire and intent to encourage voluntary restoration.

Under the legislation any Good Samaritan who is willfully trying to abate a health, safety or environmental liability can apply for coverage. In order to receive coverage under this Shield Law, the parties must:

1. Provide services, land or materials at no cost or at cost.[2]
2. Does not knowingly worsen a discharge or implement a project that is likely to impact water pollution as outlined in section 1 of the act of June 22, 1937 (P.L. 1987, No. 394), known as The Clean Streams Law.[3]

The legislation provides parties involved (nonprofits, landowners, contractors, and designers) the following protections:

1. Immunity of liability for injuries sustained while the project is being constructed.[4]
2. Immunity of liability for injuries or damages sustained by third parties resultant from project errors or omissions.[5]
3. Immunity of liability for injuries or damages sustained as a result of the reclamation project.[6]
4. Is not legally responsible to any pollution resulting from the reclamation project.[7]
5. Shall not be subject to a citizen suit filed pursuant to section 601 of the act of June 22, 1937 (P.L. 1987, No. 394), known as The Clean Streams Law.[8]

The legislation specifically does not cover lands near mining or coal refuse sites; projects that are proven to be hydrologically connected are also ineligible.

This legislation has provided a level of confidence among reclamation groups that they are legally protected from litigation. Further, the legislation allows this protection without any specific discharge permit. It is our understanding that any discharge permit requirement would negatively impact the Commonwealth's ability to accept 319 funding for abandoned mine reclamation (AMD). Annually, 319 funds assist with $1M to $2M in AMD reclamation funds. Attached as Attachment A is the

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[1] Commonwealth of Pennsylvania Legislature, Environmental Good Samaritan Act, 1999
[2] Ibid
[3] Ibid
[4] Ibid
[5] Ibid
[6] Ibid
[7] Ibid
[8] Ibid

Commonwealth's application for Good Samaritan protection. Attachment B indicates Pennsylvania impacts.

Attachment A

Commonwealth Good Samaritan Application

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

ENVIRONMENTAL GOOD SAMARITAN PROJECT PROPOSAL

DEP USE ONLY
Date Received
I.D. Number

SECTION A. APPLICANT

1. **Applicant's Name:**
   Mailing Address:
   E-mail address:

Applicant is: (check appropriate blocks)
☐ an individual ☐ an authority
☐ an association ☐ other body of local government
☐ a business ☐ a state or federal agency
☐ Other: describe: _____

2. **Project Coordinator's Name:** **Telephone No.:** ( ) -
   Mailing Address:
   E-mail address:

3. **Provide the names and addresses of project landowners on Attachment A and project participants on Attachment B. Provide the names and addresses of adjacent and downstream landowners on Attachment C.**

SECTION B. LOCATION

1. **County:** **Municipality:**

2. **Narrative description of the boundaries of the project; identify the properties and their owners within and adjacent to the project area. The applicant may attach a map that provides this information instead of the narrative.**

3. **Newspaper with general circulation in the locality of the project:**
   Name:
   Address:
   Telephone:

SECTION C. DESCRIPTION OF PROJECT

1. **Project Name:** _____
   Has project started? ☐ Yes When? _____ ☐ No
   Check type of project: ☐ Water Pollution Abatement ☐ Reclamation ☐ Both

2. **Project Area:** _____ acres **Project duration (months)** _____

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3. Project Description - Describe the problem to be addressed by the project and the sequence and timing of project activities, include identifiable milestones and the timetable for completing each milestone. If the project has started, identify the activities currently taking place.

4. Right of Entry: Attach documentation that each landowner has given the applicant, the participants and the Department permission to enter onto the project area to Attachment D.

5. Certification and Signature:

I certify that the information in this application is true and correct to the best of my knowledge.

Submitted by: _____ _____
Applicant Date

Signature: _____ _____
Title

Attachment A
List of Landowners

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Department I.D.

(Project Name) (Township) (County)

The following landowners have or will have provided access to their land for the reclamation or water pollution abatement project identified above. These landowners may be eligible for coverage under the Environmental Good Samaritan Act of 1999.

Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature
Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature
Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature
Name: Mailing Address: Phone #:	Name: Mailing Address: Phone #:

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Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature_____	Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature

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Department I.D.

Attachment B
List of Project Participants

(Project Name) (Township) (County)

The following persons have or will have provided equipment, materials or services for the reclamation or water pollution abatement project identified above. These persons may be eligible for coverage under the Environmental Good Samaritan Act of 1999.

Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature
Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature
Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Name: Mailing Address: Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature
Name: Mailing Address:	Name: Mailing Address:

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Department I.D.

Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature	Phone #: Type of person: ☐ Individual ☐ ☐ ☐ Association ☐ Authority or Local Government ☐ State or federal agency ☐ Other Signature

Attachment C
List of Adjacent and Riparian Landowners

(Project Name) (Township) (County)

The following landowners either:

(1) own property immediately next to the property on which the project will take place; or

(2) own stream-side property within 1,000 feet (304.8 meters) downstream of the project.

Name: Mailing Address: ☐ Adjacent ☐ Downstream	Name: Mailing Address: ☐ Adjacent ☐ Downstream
Name: Mailing Address: ☐ Adjacent ☐ Downstream	Name: Mailing Address: ☐ Adjacent ☐ Downstream
Name: Mailing Address: ☐ Adjacent ☐ Downstream	Name: Mailing Address: ☐ Adjacent ☐ Downstream
Name: Mailing Address:	Name: Mailing Address:

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Department I.D.

☐ Adjacent ☐ Downstream	☐ Adjacent ☐ Downstream
Name: Mailing Address:	Name: Mailing Address:
☐ Adjacent ☐ Downstream	☐ Adjacent ☐ Downstream
Name: Mailing Address:	Name: Mailing Address:
☐ Adjacent ☐ Downstream	☐ Adjacent ☐ Downstream

Attachment D
Permission to Enter Project Area

Each landowner, whose property will be used for the proposed project or used to provide access to the project area, must give in writing his or her permission for the project applicant and participants to come onto the property to work on the proposed project. Each landowner must also give the Department of Environmental Protection permission to come onto the property to observe project activities, collect samples and otherwise do its job. Attach documents here.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

APPROVAL OF COVERAGE UNDER THE ENVIRONMENTAL GOOD SAMARITAN ACT

In compliance with the provisions of the Environmental Good Samaritan Act of 1999, the Pennsylvania Department of Environmental Protection hereby approves the _____
(Name of Project)

_____.
(Water Pollution Abatement and/or Reclamation Project)

to be conducted by the _____
(Applicant) in ____, _____.
(township) (county)

The attached lists of landowners and project participants may qualify for the protections and immunities provided by the Environmental Good Samaritan Act for their voluntary reclamation of land or water adversely affected by abandoned mining, oil or gas extraction or exploration for these resources. A person who under existing law is or may become responsible to reclaim the land or address the water pollution or anyone who by order or otherwise is required to or agrees to perform the reclamation or abate the water pollution is not eligible for the protections and immunities provided by the Environmental Good Samaritan Act. This project approval makes no determination as to the eligibility of the landowners and participants identified on the attached lists for protection and immunities provided by the Environmental Good Samaritan Act.

The following permits must be applied for and issued before work on the project site may begin. Applications for these permits may be obtained from this DEP office.

_____

_____

_____

Coverage approval date _____

Authorized by _____

_____ Office

Attachments

5600-PM-MR0020 Rev. 10/2006

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION

ENVIRONMENTAL GOOD SAMARITAN PROJECT PROPOSAL

INSTRUCTIONS

GENERAL INFORMATION

1. Eligible Projects are:
   - Projects that reclaim lands that have been adversely affected by mining, oil or gas extraction or exploration for these resources.
   - Projects that treat or abate water pollution caused by mining or oil or gas extraction.
2. This information is provided to assist the applicant in obtaining DEP approval for reclamation and water pollution abatement projects under the Environmental Good Samaritan Act.
3. Complete the application by typing or printing clearly. If additional space is required to provide information in this application, attach an 8½ x 11 inch sheet of paper appropriately labeled.
4. One original of this application must be completed and submitted to the appropriate DEP District Mining Office.

GROWING GREENER PROJECTS

If a project is approved for a grant under the Pennsylvania Growing Greener program, the applicant may apply for coverage under the Environmental Good Samaritan Act by completing Attachments A, B, C and D and sending them along with one copy of the Growing Greener grant application to the appropriate District Mining office.

SECTION A. APPLICANT INFORMATION

1. **Applicant:** Identify the person or organization under which the application is filed, the applicant's legal mailing address, and the type of person or persons. The applicant is usually the person who has overall responsibility and control of the project activities.
2. **Project Coordinator:** Give the name of the individual representing the applicant and having primary control of on-site activities; the daytime telephone number for the project coordinator; and the legal mailing address of the project coordinator.
3. **List of Landowners:** Identify all landowners within the project area on Attachment A.
4. **List of Project Participants:** Identify the persons or organizations that will be working on the project on Attachment B. It is not necessary, but it is a good idea, to identify individual members of participating organizations. The project applicant can add persons to this list as the project progresses. Persons not on the list are not prohibited from working on the project.
5. **List of Adjacent and Riparian Landowners:** Provide the names and addresses of property owners adjacent to the property(ies) on which the project will take place on Attachment C.

   If the project is adjacent to a stream or involves a discharge to a stream, provide the names and addresses of persons who own property along the stream downstream of the project area.

SECTION B. LOCATION

1. **Location:** Give the name of the county and municipality, for each site.
2. **Project boundaries:** Provide a narrative describing the boundaries of the project or a map of the project boundaries. Identify the properties and their owners within and adjacent to the project area.
3. **Newspaper of general circulation published in locality of proposed project:** List the name, address and telephone number of a newspaper of general circulation published in the locality of the proposed project. The Department will be responsible for project notices.

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SECTION C. PROJECT DESCRIPTION

1. **Project Name:** Give the name of the project and check the box which identifies the type of project.
2. **Project area:** Give the total area in acres to be affected by the project and indicate the expected duration of the reclamation and abatement activities that will be taking place on the project site.
3. **Description of the problem to be addressed by the project:** If the project is a land reclamation project, describe the existing site conditions and total acres to be reclaimed. If the project is a water pollution abatement project, describe the discharges, identifying the polluting substances and their respective concentrations and flow rates. Describe the general nature of the impacts of the discharges on the receiving stream. Describe the work to be done and the sequence and timing of activities.
   a. For reclamation projects, include a description of the reclamation to be accomplished.
   b. For water pollution abatement projects, include a description of the abatement or treatment measures planned.

   Include a table that identifies the major project milestones and the estimated date for completing each milestone.
4. **Permission to Enter Project Area:** Each landowner, whose property will be used for the proposed project or used to provide access to the project area, must give his or her **permission in writing** to the project applicant to come onto the property to work on the proposed project. Each landowner must also give the Department of Environmental Protection permission to come onto the property to observe project activities, collect samples and otherwise do its job. Documentation of landowner permission may be in the form of a letter to the applicant, signed by the landowner. Documentation should be attached to Attachment D.

Once the project is approved, DEP will maintain a permanent record of the participants and landowners who are protected under the Environmental Good Samaritan Act.

For more information or assistance, please contact DEP's District Mining Offices:

Pottsville District Mining Office
5 West Laurel Boulevard
Pottsville, PA 17901-2454
Telephone: 570-621-3118
Counties Served: Berks, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Pike, Schuylkill, Susquehanna, Wayne, Wyoming, and York

Moshannon District Mining Office
186 Enterprise Drive
Philipsburg, PA 16866
Telephone: 814-342-8200
Counties Served: Bradford, Cameron, Centre, Clearfield, Clinton, Lycoming, Potter, Snyder, Sullivan, Tioga and Union.

Knox District Mining Office
White Memorial Building, P.O. Box 669
Knox, PA 16232-0669
Telephone: 814-797-1191
Counties Serves: Butler, Clarion, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Venango and Warren.

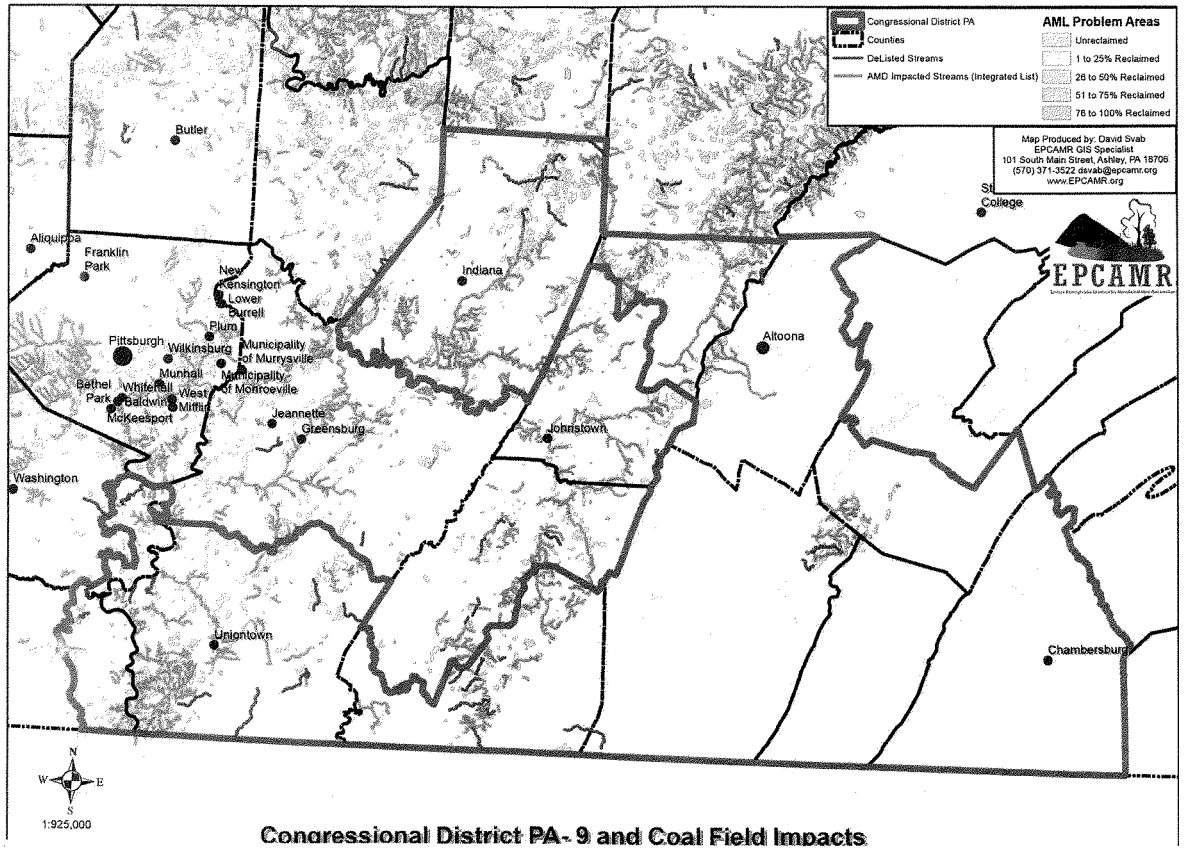
Cambria District Mining Office
286 Industrial Park Rd
Ebensburg, PA 15931
Telephone: 814-472-1900
Counties Served: Adams, Bedford, Blair, Cambria, Cumberland, Franklin, Fulton, Huntingdon, Indiana, Juniata, Mifflin, Perry and Somerset.

Greensburg District Mining Office
Armbrust Professional Center 8205
Route 819
Greensburg, PA 15601
Telephone: 724-925-5500
Counties Served: Allegheny, Armstrong, Beaver, Fayette, Greene, Washington and Westmoreland.

California District Mining Office
25 Technology Drive
Coal Center, PA 15423
Telephone: 724-769-1100
Counties Served: All counties with underground Bituminous mining and subsidence.

Attachment B

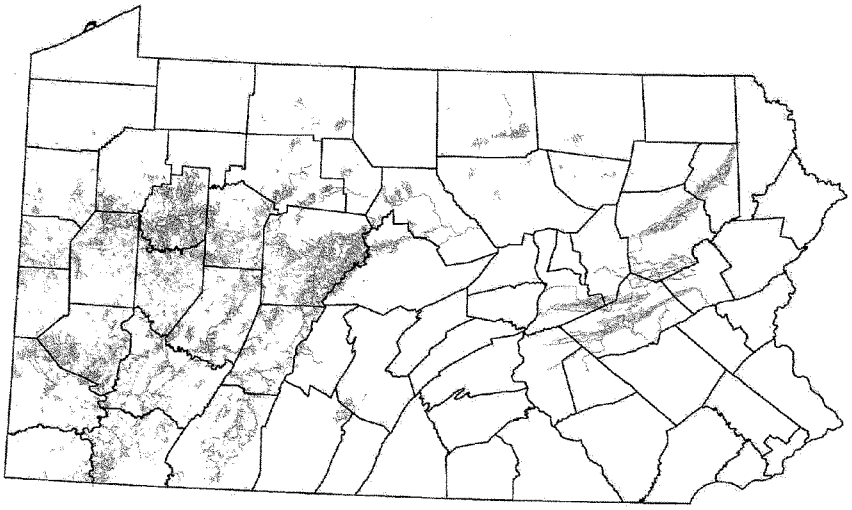
Congressional Mapping for 9th and 5th District.

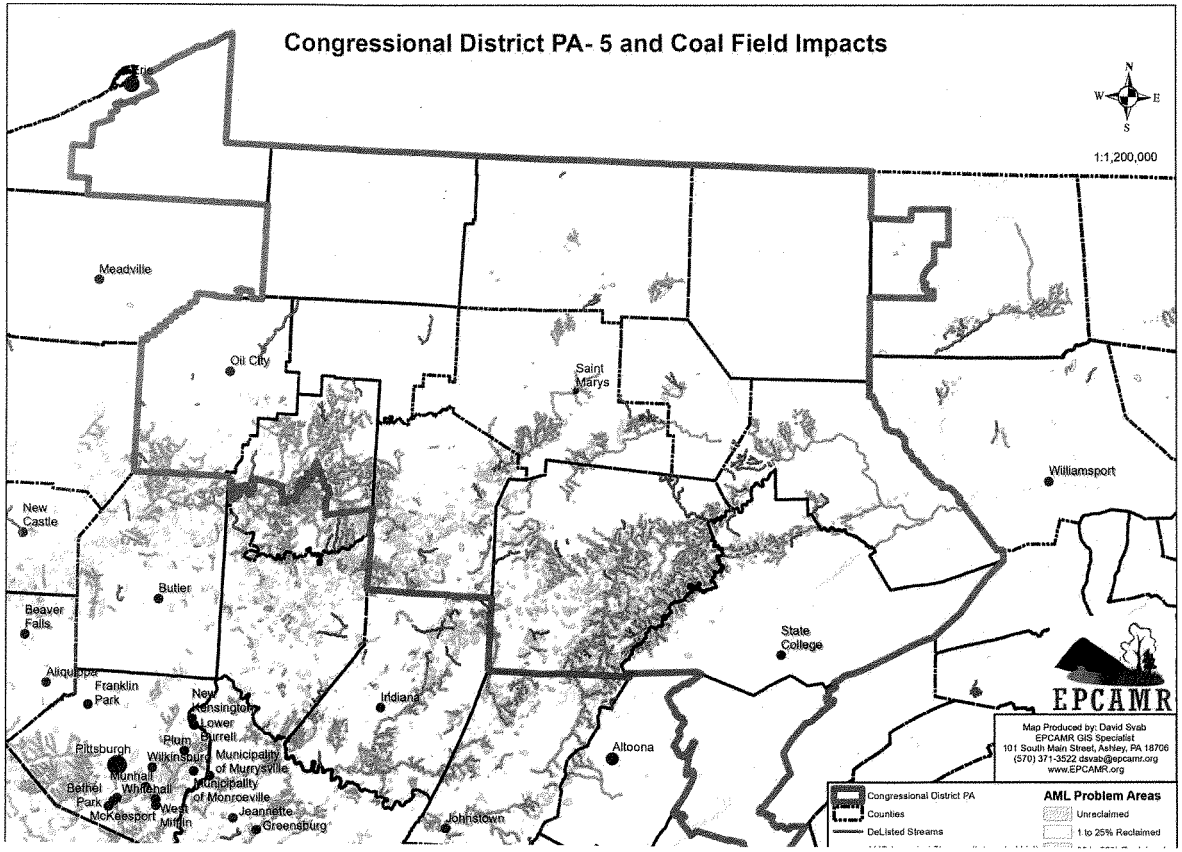


Congressional District PA- 9 and Coal Field Impacts

Status	# of AML Sites	# of Features	Acres	Cost 8k/Acre	Cost 10k/Acre	District #
UNRECLAIMED	920	4,177	21,534	172,272,000	215,340,000	9
RECLAIMED	38	965	5,976	47,808,000	59,760,000	9
ACTIVE (REMINE)	4					9
Total:	**962**	**5,142**	**27,510**	**220,080,000**	**275,100,000**	

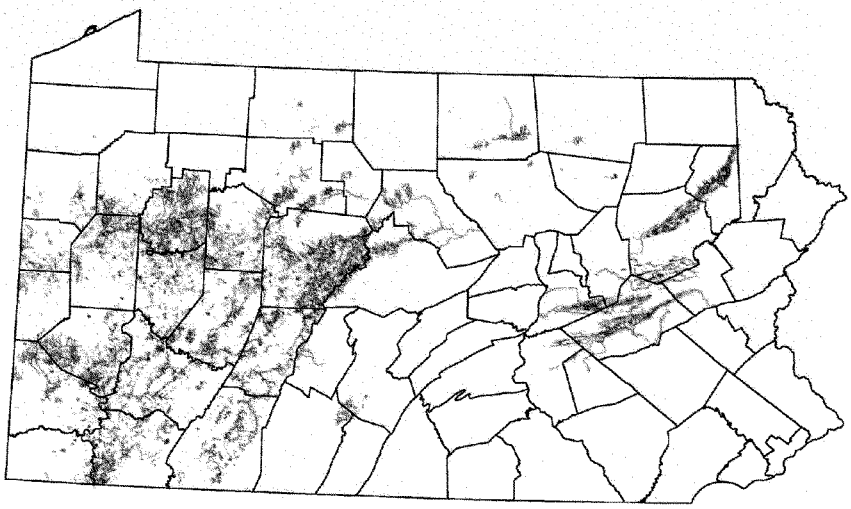
AMD STREAMS 1,005.9 miles

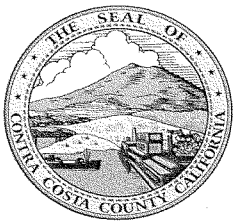



Congressional District PA- 5 and Coal Field Impacts
N
W
E
S
1:1,200,000
Erie
Meadville
Oil City
Saint Marys
Williamsport
New Castle
Butler
Beaver Falls
Aliquippa
Franklin Park
New Kensington
Lower Burrell
Plum
Wilkinsburg
Municipality of Murrysville
Municipality of Monroeville
Pittsburgh
Munhall
Whitehall
Bethel Park
McKeesport
West Mifflin
Jeannette
Greensburg
Indiana
Johnstown
Altoona
State College
EPCAMR
Map Produced by: David Svab
EPCAMR GIS Specialist
101 South Main Street, Ashley, PA 18706
(570) 371-3522 dsvab@epcamr.org
www.EPCAMR.org
Congressional District PA
Counties
DeListed Streams
AML Problem Areas
Unreclaimed
1 to 25% Reclaimed

Status	# of AML Sites	# of Features	Acres	Cost $8k/Acre	Cost $10k/Acre	District #
UNRECLAIMED	1,545	8,133	55,025	$440,200,000	$550,250,000	5
RECLAIMED	55	1,437	10,008	$80,064,000	$100,080,000	5
ACTIVE (REMINE)	2					5
Total:	**1,602**	**9,570**	**65,033**	**$520,264,000**	**$650,330,000**	

AMD STREAMS 1,852 miles





TESTIMONY

OF

JOHN GIOIA

CHAIR OF THE BOARD OF SUPERVISORS

AND THE

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

CONTRA COSTA COUNTY, CALIFORNIA

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

REGARDING

CLEAN-UP OF ABANDONED MINES

October 21, 2015

651 Pine Street, Martinez, California 94553
Contact: Julie Bueren, 925-313-2202

Mr. Chairman, Congresswoman Napolitano, and members of the Subcommittee, thank you for the opportunity to provide you with information on an issue of great importance to the water quality of our County, the State of California, as well as other States: the cleanup of abandoned or inactive mines. I am Chair of the Board of Supervisors of Contra Costa County and the Contra Costa County Flood Control and Water Conservation District. I am pleased to inform you of our experiences with, and provide you with recommendations related to, abandoned mine clean-ups and issues associated with a county agency involved in the clean-up work.

With this testimony I would like to leave the Subcommittee with the following key messages:

- Abandoned mine sites have a huge impact on our nation's water quality.
- Our experience can serve as a cautionary tale on the need for the federal government to better address the clean-up of such sites.
- Congress needs to assure that the federal government better facilitates the remediation of these mine sites.

Background

Contra Costa County is located in the San Francisco Bay Area of California. The west portion of the County fronts on San Francisco Bay and San Pablo Bay, while the north fronts along the Carquinez Strait and the Sacramento River, and the east drains into the Sacramento-San Joaquin Delta. Mount Diablo, the most prominent and tallest mountain in the area, presides over the center of the County. Marsh Creek drains from its headwaters at the top

of Mount Diablo to the east and north toward the Delta and discharges into the Sacramento River. An abandoned mercury mine is located on the upper slopes of Mount Diablo, near the headwaters of Marsh Creek and the intersection of Marsh Creek Road and Morgan Territory Road. Rain water washing over the old, exposed mine tailings transports mercury down into Marsh Creek and ultimately out into the San Francisco Bay. In the early 1960's, our Flood Control and Water Conservation District built flood protection improvements in the Marsh Creek watershed, channelizing the downstream reaches of Marsh Creek in the flat alluvial plain through the cities of Brentwood and Oakley, which have a combined population of about 95,000.

In 1963 the Flood Control and Water Conservation District built a dam across Marsh Creek for flood control purposes, approximately half way up the watershed, upstream of the City of Brentwood. The resulting Marsh Creek Reservoir impounds water year round and has extensive riparian, marsh and aquatic growth along the shoreline, providing habitat for a variety of wildlife including resident populations of fish. The Flood Control and Water Conservation District owns the Marsh Creek Reservoir and most of the downstream channel.

The Mercury Mine

Mercury was first mined in this area in 1849 and continued on and off until 1971. In 1974, the current property owner purchased the abandoned mine and surrounding property with no intent of mining or development but only as a beautiful spot to raise children and retire. His property totals 109 acres and is bordered on three sides by Mount Diablo State Park.

In 1978, because of mercury discharging from the mine site and even though the property owner was not a mining operator and did not create the problem, the Regional Water Quality Control Board (RWQCB) issued the property owner a Clean-up and Abatement Order. In response, the owner spent in excess of $300,000 to address the problem, but lacked the resources to complete a full-scale mine remediation project.

Health Issue

In 1980 the California Department of Fish and Game (now Department of Fish and Wildlife) analyzed fish from the reservoir and found mercury levels in the fish flesh to exceed existing health standards. The reservoir was then fenced off and posted against trespassing or fishing due to the mercury contamination. Mercury is a health problem in the San Francisco Bay Area and advisory notices are posted for adults to refrain from eating fish from the Bay more than twice a month (or once a month for children and pregnant women) due to elevated levels of mercury in the flesh of the fish.

In 1995 Contra Costa County contracted with a team from the University of California at Davis to study and provide an assessment of mercury in the Marsh Creek watershed. The study showed that about 95% of mercury in Marsh Creek comes from the two tributaries around the mercury mine, most notably Dunn Creek; and 88% is traceable specifically to the mine tailings. While Dunn Creek is the source of 95% of the mercury to Marsh Creek, it provides only 7% of the total water volume in the watershed and less than 4% of suspended solids.

California's State Water Resources Control Board has identified the entire length of Marsh Creek, from the mine site to the Sacramento-San Joaquin Delta, as an impaired water body for mercury and heavy metals under Section 303(d) of the Clean Water Act. The Central Valley RWQCB has approved a total maximum daily load (TMDL) for mercury and methylmercury in the Delta. The TMDL will provide a long range plan and goals for reducing mercury in the watersheds that drain into the Delta and San Francisco Bay. The Mount Diablo mercury mine is recognized as a significant source of mercury in the Delta, so it is imperative to remediate the mine tailings and prevent further discharge of mercury from the abandoned mine site.

Attempted Remediation and Liability

Based on the UC Davis study, Contra Costa County applied for a Calfed grant in 1997 to remediate the mercury mine and reduce the mercury transported from the mine to the downstream watershed and into the Bay/Delta system. Because of liability issues, though, the County withdrew its application. The County's position at the time was expressed in a staff memo that said in part, "It is sad that we can't try to help this problem, but we cannot risk getting into a situation that costs the County $5 million dollars plus huge attorney bills like it did the East Bay Municipal Utility District" (EBMUD).

There appear to be at least two sources of potential liability exposure. The Clean Water Act could place the County in a similar situation to that of EBMUD subsequent to its work on the Penn Mine project. EBMUD had

worked with the State's RWQCB to develop a remediation plan for the mine site. The remediation work, which was completed in 1978, reduced the pre-project copper discharge from an average of 64,000 pounds per year to an average of 13 pounds per year. A subsequent suit charged that EBMUD should have taken out a National Pollutant Discharge Elimination System (NPDES) permit. The courts agreed, and required EBMUD to improve the discharge to current water quality standards. EBMUD and the RWQCB then worked on a follow-up remediation plan that brought the site back to pre-mining conditions at a cost of approximately $10,000,000.

In participating in the clean-up of the Mount Diablo mercury mine, the County could also face liability exposure from the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This law imposes liability upon owners and operators for response costs related to the release of hazardous materials from a facility. The Environmental Protection Agency (EPA) does have an administrative agreement to reduce liability for "Good Samaritan" organizations, such as the County Flood Control and Water Conservation District, to clean up mine sites, but it would not protect the District from all liability. The agreement would protect the Flood Control and Water Conservation District from a claim by either EPA or by a past operator of the mine <u>but not from third parties</u>. It was a third party lawsuit that was brought against EBMUD and it was that lawsuit that underscored the liability exposure for our Flood Control and Water Conservation District.

To address this issue, the County has sought a program change to allow for construction as an eligible expense under the Corps' Remediation of

Abandoned Mine Sites (RAMS) program (WRDA 1999 – Sec. 560). The Corps became involved with the project in 2007 to do the project planning work.

Remediation of Abandoned Mine Sites - RAMS

The 2007 Water Resources Development Act (WRDA – Sec. 2025) increased the authorization for the Remediation of Abandoned Mine Sites program (RAMS) of the Army Corps of Engineers. The Statement of Managers, accompanying the Conference Report, contained language stating, "In carrying out this section, the Secretary shall give priority to the Mount Diablo Mercury Mine Clean-Up project in Contra Costa County California". This project was the only one in the country so recognized.

Because funding for this program has not been included in any Administration budget proposal since that time, the County has worked diligently with Congress to try and add funding for the program, with some success. Between FY '08 and FY '09, over $1.1 million was made available for RAMS. Of that, $517,000 was utilized by the Corps to begin work on a planning study for the Mount Diablo mine, estimated to eventually cost $1 million.

The Corps initiated a Technical Project Planning process; a community based stakeholder-driven initiative to identify project goals and objectives, probable remedies, and a conceptual design. The planning process initially focused on the mine site and mitigation for the impact the mine has had on the entire watershed. In September 2012 the Corps completed about half of the planning process, utilizing all of the original $517,000. An additional

$483,000 was needed to complete the planning process. At our request, Congress provided $1 million in the FY '14 appropriations bill, and the Corps work plan contained language stating, in part, that it was to "Remediate mercury contamination in the Marsh Creek watershed (which drains into Suisun Bay, a part of San Francisco Bay)". At the County's urging, Congress included $2 million for RAMS in FY '15.

Responsible Party

In the early stages of Corps involvement in the project, a chain of title on the Mercury Mine was performed to determine which mining companies owned or operated the mine. EPA sought to ascertain whether there was a Responsible Party liable for cleaning up the mercury mine under CERCLA. Using information provided by the Corps, EPA in 2009 identified a former mining company as a Responsible Party and turned over enforcement to the Central Valley Regional Water Quality Control Board. The RWQCB has continued to pursue the Responsible Party and issued a Cleanup and Abatement Order in 2013. The Responsible Party, though, claims to have not performed active mining on the site, but to have only conducted exploratory excavation for a short period of time and only at an isolated location within the mining complex.

Current Project Status

The Responsible Party has appealed the issuance of the Clean-up and Abatement Order to the California State Water Resources Control Board. The County is currently working with the Corps to develop a cost share agreement to complete the project planning and design work. The

information developed through the Corps planning process will address the downstream impacts of the mine on the watershed and will not focus on the mine site itself. Developing the planning for the mine site will come from the Responsible Party.

Summary

Contra Costa County and the Contra Costa County Flood Control and Water Conservation District have been interested in and working on remediating the Mount Diablo Mercury Mine and its downstream impacts since 1995.

The recent release of contaminants and heavy metals into the Animas River in Colorado has underscored the importance of cleaning up abandoned mine sites. There are thousands of mine sites leaching contaminants each year into our nation's rivers and waterways, and though not as dramatic as the sudden release into the Animas River, they can have the same long-lasting cumulative impact.

Having worked on plans to clean up the Mount Diablo Mercury Mine and its downstream impacts for 20 years, we have some suggestions for improving the process.

> **Funding.** The Corps RAMS program has been sporadically funded through the years. This inconsistent funding makes it difficult for projects to move forward. In addition, the total amount authorized will support only a few projects. To have a meaningful impact on improving water quality from abandoned mine sites, Congress should consider increasing the overall authorization level for the program, as

well as its annual appropriation. Existing law does not provide for the construction of projects. Clearly, this needs to be remedied and, again, requires greater authorization and appropriations levels.

Effective Program. The Corps has been a welcome partner with the County on the Mount Diablo Mercury Mine project. However, if Congress increases funding and aggressively pursues the clean-up of abandoned mine sites, there is a question of available resources within the Corps organization. Congress should ask the Corps for recommendations on how to effectively scale up implementation of mine clean-up projects. The recommendations should include how this can be achieved without increasing project costs, as scaling up can result in increased bureaucracy and decreased efficiencies.

Liability. The County Flood Control and Water Conservation District owns the Marsh Creek Reservoir and is willing to implement a project to remediate mercury deposited in the reservoir provided funding can be secured. However, the County cannot accept the liability associated with cleaning up mercury on private property such as the mine site. If, despite the best efforts of the RWQCB, the Responsible Party is not liable for cleanup of the entire mine site, then another party will have to finish the cleanup project. Again, the Corps currently has authority under the RAMS program only for the planning of a cleanup project. Congress should grant the Corps the authority to construct cleanup projects, especially in cases like ours where the mine is on private property owned by a non-mining entity

or a Responsible Party is not liable for the entire cleanup, or there is no Responsible Party.

Timing. The County began an effort to clean up the Mount Diablo Mercury Mine by initiating a study in 1995 and has been diligently pursuing the clean-up of the mine site ever since. The County has been walking a fine line of pushing a cleanup project forward without accepting an undue level of risk and liability. After 20 years we are about halfway through the planning process. Clearly something needs to be done to improve the project planning and development process. Congress should request that the Corps identify some of the key hurdles to improve the project planning and development process, and recommendations for eliminating or reducing the impacts of those hurdles.

The Mount Diablo Mercury Mine project has been the County's top environmental priority for many years. The project has also enjoyed the strong support of our Congressional Delegation and of Congress. Yet securing a funding appropriation for and working on the planning process has taken too much time. While these projects are complex and involve numerous players and stakeholders, the water quality of our nation's rivers and waterways won't improve unless we can do more of these projects and do them more quickly.

Despite our relative success in negotiating the halls of Congress and working with the Corps, it has now been nine years since I testified before a Senate

Committee on this general subject matter, and 20 years since the County began an effort to remediate the Mount Diablo Mercury Mine.

It seems apparent that a federal mechanism needs to be available to assist with projects such as ours, and a source of funding for the best of these projects with some reasonable assurance, once work has begun, that it will be completed. And this needs to be provided with the most minimal level of bureaucracy possible given the delicate nature of the work involved. Disincentives for participating in these projects need to be recognized and addressed.

Our Mount Diablo project is one such very good project. We have appreciated the recognition and cooperation we have received from Congress and the Administration, and look forward to continuing to work with you until this project is completed. We hope that this can be done sooner rather than later, and we would be happy to report to you on progress as it is made under whatever improved regimen this Committee might work to establish.

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American Exploration &
Mining Association

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October 21, 2015

The Honorable Bob Gibbs
Chairman, Subcommittee on Water Resources and Environment
Transportation & Infrastructure Committee
United States House of Representatives
Washington DC 20515

The Honorable Grace Napolitano
Ranking Member, Subcommittee on Water Resources and Environment
Transportation & Infrastructure Committee
United States House of Representatives
Washington DC 20515

Chairman Gibbs, Ranking Member Napolitano and Members of the Committee,

The American Exploration & Mining Association (AEMA) appreciates this opportunity to provide this statement for the hearing record on *Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups.*

Executive Summary

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.

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 reclaim and improve safety and environmental conditions at 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.

Industry wants to see abandoned mines cleaned up. After all, they are incorrectly portrayed as being *our* dirty pictures, when they in fact represent the results of historic practices, typically 50 to 150 years old, implemented by companies no longer in existence and/or persons no longer alive, and are reflective of societal values at that time (for example metals production at all costs for World War II). Nevertheless, mining opponents use pictures of historic, unreclaimed abandoned mines to foment public opposition to new mine proposals, suggesting disingenuously that these historic practices reflect modern practices. This is the equivalent of showing a picture of a 1957 Chevrolet Bel Air and stating that it does not have seat belts, air bags, pollution control devices or meet CAFE requirements and therefore GM should not be allowed to produce new cars in 2011.

Industry wants to see AMLs reclaimed and safety and environmental conditions improved as much as anyone, but we need your help. The mining industry has the desire, the experience, the technology, and the expertise to mitigate and reclaim AMLs. In fact, the mining industry has more experience and expertise than all other potential Good Samaritans combined. Additionally, the mining industry can contribute private-sector capital towards addressing the abandoned mine problems thereby reducing the need for public-sector resources. Effective Good Samaritan legislation makes sense and can be a win-win-win-win for the environment, for federal, state and local governments, for jobs for the Good Samaritan, for the community, and for society. We are here today to ask Congress to do its part and enact Good Samaritan legislation that will remove the legal liability hurdles and provide non-monetary incentives for a variety of persons and entities to reclaim and improve safety and environmental conditions at AMLs throughout the West.

We applaud the Chairman for holding this hearing and look forward to working with him to produce Good Samaritan legislation that will actually result in on-the-ground Good Samaritan cleanups at Abandoned Mine sites.

AMERICAN EXPLORATION & MINING ASSOCIATION: WHO WE ARE

American Exploration & Mining Association (AEMA) (formerly Northwest Mining Association) is a 120-year old, 2,300 member national association representing the minerals industry with members residing in 42 U.S. states, seven Canadian provinces or territories, and 10 other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. Our broad-based membership includes many small miners and exploration geologists as well as junior and large mining companies, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. More than 80% of our members are small businesses or work for small businesses. Most of our members are individual citizens. Our members have extensive first-hand experience with reclaiming active and inactive mine sites and remediating a variety of environmental conditions and safety issues at these sites.

Our members also have extensive knowledge of Abandoned Mine Lands (AMLs) in the U.S.
In addition to the study mentioned above, Ms. Struhsacker has testified before the Senate Energy ar Natural Resources Committee on AML issues (March 12, 2008), and I have testified before the Hou. Energy & Minerals subcommittee on AML and Good Samaritan issues on three previous occasions (July 13, 2006, October 3, 2007 and July 14, 2011). Another AEMA member, Julian C. Isham, testified at a House Energy & Minerals subcommittee field hearing on *Abandoned Mines and Mercury in California* (November 23, 2009).

ABANDONED MINE LANDS ARE HISTORIC

It is important to understand when we talk about hardrock abandoned mine lands we are talking about a problem which was created in the past due to mining practices used at sites mined prior to the enactment of modern environmental laws and regulations and the requirement for mine operators to provide financial assurance to guarantee their sites will be properly reclaimed. 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.

It also is important to note that during World Wars I and II, the federal government directed 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.

Many modern mining practices began to be implemented 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 25 years old. For example, Nevada's state reclamation law went into effect in 1990, only 21 years ago. BLM's regulations for hardrock mining, the 43 CFR. Subpart 3809 program, went into effect in 1981 and were substantially updated just ten 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. The creation of these laws has caused the mining industry to completely revise how mines are designed and operated, so that now, reclamation is a fundamental and integrated part of mine planning and operation as today's mines are designed, built and operated for closure. Also, because these laws and 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 available to reclaim the site. In a June 21, 2011 letter from Robert V. Abbey, Director of the Bureau of Land Management (BLM) to Senator Lisa Murkowski, the BLM told Senator Murkowski that 659 Plans of Operation have been approved since 1990 and that none of those sites have been placed on the CERCLA NPL list. 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 CFR. Part 228A surface management regulations governing hardrock mining operations on National Forest Lands in 1974. Six years later, in 1980, BLM enacted the 43 CFR. 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 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. According to BLM's June 21 letter to Senator Murkowski, the amount of financial assurance currently held by BLM is $1.7 billion.

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.

Table 1
Chronology of U.S. Mine Development and Enactment of Environmental Regulations

Year	Commencement of Mining Activities	Enactment of State and Federal Environmental Laws Affecting Mining
	Historic Mining	
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	

Table 1
Chronology of U.S. Mine Development and Enactment of Environmental Regulations

Year	Commencement of Mining Activities	Enactment of State and Federal Environmental Laws Affecting Mining
1882	Montana - copper mining	
1906	First gold produced from Round Mountain, NV	
1917	Colorado - molybdenum mining	
	Modern Mining	
1965	Nevada - Carlin-type gold mining started	
1966		National Historic Preservation Act
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

Table 1
Chronology of U.S. Mine Development and Enactment of Environmental Regulations

Year	Commencement of Mining Activities	Enactment of State and Federal Environmental Laws Affecting Mining
		(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	
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 SITES 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 "Cleaning Up 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."

A 2007 USFS/BLM report 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 accidents or fatalities 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 AML sites located near population centers and frequently used recreation areas.

The 1998 NMA Study cited above 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.

Table 2
Generalized Characterization of Issues at AML Sites

Types of AML Problems	Examples of Typical Response Measures
Landscape Disturbances • Surface Disturbance that detracts from the aesthetic or natural appearance of the site, • Discarded equipment, abandoned buildings in disrepair	• Regrading and recontouring disturbed areas to blend in with the surround topography • Revegetating regraded areas with native species • Removing and properly disposing of discarded materials • Dismantling and disposal of buildings
Safety Hazards • Unrestricted and hazardous openings (shafts, adits, portals, stopes) • subsidence features and exploration excavations • Dangerous highwalls and open pits • Unsafe structures and dilapidated buildings	• Partial or complete backfilling of mine openings • Installation of gates, grates, and doors to impede access into mine openings, • Fencing around mine openings and hazardous highwalls and open pits • Signage to warn the public to avoid dangerous mine openings and highwalls • Removal of unsafe buildings.
Environmental Problems	

Table 2
Generalized Characterization of Issues at AML Sites

Types of AML Problems	Examples of Typical Response Measures
• Erodible waste rock dumps, tailings deposits, and smelter wastes • Acid rock drainage form mine openings, waste rock dumps, and tailings deposits • Blowing dust from tailings piles • Contaminated soils, • Chemical contamination from processing reagents	• Removing mine wastes and contaminated soils and placing in an authorized engineered structure, • Stabilizing the wastes in-situ with engineered covers to prevent wind erosion and to minimize infiltration of precipitation • Rerouting drainages to avoid contact with mine wastes • Installing plugs in portals with drainage

Although many of the above listed measures are expensive – especially those used to improve safety and 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 and the nature of AML issues is site-specific. 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. Not all AML sites that may be discharging contaminated water can be remediated easily. 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. In other words, not every AML site will be a model for a Good Samaritan project. Focusing solely on the most challenging AML sites is likely to produce programs and policies with unwarranted complexity and costs, resulting in little or no environmental improvement.

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 voluntary 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 Federal Toxic Substances Control Act. Under these laws, a mining company, state or federal agencies, communities, NGOs, individuals or other entities that voluntarily improve safety and environmental conditions at an abandoned mine site could potentially incur both immediate and "cradle-to-grave" liability, even though

they did not cause or contribute to the environmental condition at the abandoned mine land site and their actions improve the environment or abate a safety hazard.
Furthermore, they could be required under the CWA to prevent discharges to surface waters from the AML in perpetuity, or obtain a permit and treat such discharges to meet strict effluent limitations that 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 has 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 regulatory incentives and liability protection for numerous entities, including mining companies, local, state and federal agencies, communities, NGOs, and tribes to voluntarily improve safety and environmental problems caused by others at abandoned hardrock mine sites in the U.S.

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 provisions to authorize managing historic mine wastes to minimize or eliminate pollution or the threat of pollution in Good Samaritan legislation is consistent with and promotes this Congressional intent.

ELEMENTS OF EFFECTIVE GOOD SAMARITAN LEGISLATION:

To be effective, Good Samaritan legislation must embody the following key provisions:

1. **Mining companies that did not create environmental problems at an AML must qualify as Good Samaritans**. No one knows more about the proper management of mine wastes and reclaiming and mitigating mine sites than the mining industry. The mining industry has the desire, technical expertise, experience, and technology to effectively and efficiently assess the safety and environmental issues present at an AML site and to properly secure, improve safety and environmental conditions, and reclaim those sites. In some situations, this can be done in conjunction with mining and 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. Creating a Good Samaritan law that removes the existing regulatory and liability barriers that currently discourage private sector cleanups would be good public policy because it would stimulate the use of private-sector resources to address the public problems caused by abandoned mines and create jobs.

   For example, Teck Cominco American Incorporated (now Teck American) purchased the Pend Oreille Mine in Pend Oreille County, Washington in 1996 and brought it back into production in 2004. It is located in a setting where a substantial amount of historical mining took place before there were environmental laws and regulations and modern mining practices. There are many abandoned mine sites in the area of the Pend Oreille Mine. In working with the local community,

Teck determined that many of the old mine openings presented a potential hazard to public safety. Those that did not involve environmental issues were voluntarily closed through the installation of bulkheads in several of the openings.

Teck has been approached by state and federal agencies to see if it could mill some of the historic waste rock piles, ore piles and concentrate accumulations in the area. In each and every case, the company chose not to undertake this cleanup effort due to the strict nature of its Clean Water Act authorization as interpreted by Washington State that prohibits any tailings other than those generated from the Pend Oreille Mine to be placed in its lined and approved tailings disposal facility. Furthermore, the company is reluctant to undertake cleanup efforts at any of these old sites for fear of being deemed an operator and incurring cradle-to-grave liability for the site under a variety of federal and state environmental laws.

All mines run out of ore and towards the end of production may look for additional sources of mineralized material to mill. Having the ability to augment or extend the productive life of the mine benefits the mining company, the community and the Nation. It also benefits the environment through metal source reduction as more metal will ultimately be recovered from the AML sites and the resulting tailings are placed in a regulated, engineered and permitted containment structure. This promotes conservation of the resource and sustainable development with a net improvement in the environment.

This is but one of many, many examples of sites throughout North America where existing mines are located adjacent to abandoned historical mines. Another example from the Northwest is Meridian Gold Company's Beartrack Mine near Salmon, Idaho. Deposits from historic mining were located on the mine property. As a result, Napias Creek no longer supported salmon habitat. Meridian used the equipment and personnel that were on-site at Beartrack to remove the historic tailings and waste rock piles from Napias Creek and fully mitigate the site and restore the streambed to salmon habitat. The company won several environmental awards for their work. The mine was able to use the tailings and waste rock materials from historic mining *located on the mine property* (emphasis added), at the Beartrack Mine, increase the ultimate recovery of metals from the mine and improve the environment. A scenario where everyone wins.

I have emphasized *located on the mine property* to highlight the important distinction between the Pend Oreille mine example and the Beartrack example. The Napias Creek tailings and waste rock piles were located on the mine property and covered by Beartrack's operating permits. The lack of effective Good Samaritan legislation has prevented, to date, the same win-win-win result at Pend Oreille.

2. A Good Samaritan law must have sufficient flexibility to allow site-specific solutions that take into account the fact that many historic mine sites include both public and "private" land where the previous land owner(s) no longer exist.

3. A potential Good Samaritan must be able to gather the needed site characterization data to develop a technically sound remediation proposal without having to conduct a Potentially Responsible Party (PRP) search or go through a long, complicated and involved permitting process. A Good Samaritan must be able to conduct a site survey without the potential for becoming liable for the site solely by virtue of gathering data.

4. Individual Good Samaritan projects should be subject to review and authorization by the federal government **or** by an individual state's abandoned mine land program (and/or the environmental permitting authority for those states where EPA has delegated Clean Water Act authority).

5. The permit process must be simple, straight-forward and understandable. The environmental requirements for a Good Samaritan project should be wrapped into a single permit. The permit should be approved only if the project is technically sound and promises overall improvement to the environment and/or securing of safety hazards.

6. The Good Samaritan must have full legal protection under the permit. That is, a Good Samaritan permit-holder must be able to obtain a specific, concrete list of the federal, state and local environmental laws that would be deemed satisfied by completion of the work authorized under the permit. One of the Good Samaritan bills introduced in the 109th Congress, S. 1848, and H.R. 3203 introduced in the 111th Congress, contain a list of federal environmental laws that is a good starting point.

7. Good Samaritan projects should be allowed as long as they are likely to result in an improvement to the environment, even if they will not result in the complete cleanup of all contaminants at an abandoned mine land site or the attainment of all otherwise applicable environmental standards, such as stringent water quality standards. To quote an oft-repeated phrase, "don't let pursuit of the perfect be the enemy of the good." A 75 percent improvement in water quality downstream from an AML site is a far better result than no cleanup due to a Good Samaritan's concerns that their cleanup activities may not be able to achieve water quality standards that would be applicable at a modern mine.

8. The permitting authority must be given discretion under any Good Samaritan legislation to make site-specific adjustments to environmental requirements, standards and liabilities arising under state and federal environmental laws that could otherwise be applicable and prevent Good Samaritans from undertaking remedial actions. This is not a new concept. The Applicable or Relevant and Appropriate (ARAR) approach under CERCLA might be a reasonable starting point.

   The permitting authority also should have the discretion to waive the PRP search requirement. A Good Samaritan willing to spend private monies to improve safety and environmental conditions and reclaim an AML site should not have to spend time and resources conducting and certifying a PRP search. It should not matter whether there might be a PRP. The goal should be environmental improvement, not finding someone to blame.

9. Any Good Samaritan legislation, to be effective and result in actual, on-the-ground cleanup, should encourage entities with sufficient expertise and resources to manage and/or use the mine wastes in order to recover, remove, or reduce the metal content. In many settings, this would result in the greatest degree of environmental improvement.

   Using tailings, waste rock piles and other historic mining materials at AML sites may be the most efficient means of cleaning up a site. The most efficient and environmentally benign scenario for managing historic mine wastes is using such materials feedstock at an adjacent or nearby modern fully regulated and bonded mineral processing facility. The new waste that would be generated from historic materials at a modern mineral milling facility would then be disposed of in a

modern engineered facility that complies with current environmental standards and practices including performance monitoring and financial assurance. Using historic mine waste as a feedstock is a superior environmental remedy that achieves resource recovery and source reduction. Given the desirability of achieving the resource recovery and source reduction that can result from using historic mine materials, Good Samaritan legislation should encourage management of historic ores, minerals, waste rock piles and other materials existing at an AML site to create jobs, taxes, a return on investment and a cleaner environment.

The benefits associated with reusing historic mine wastes are twofold. First, treating these wastes to recover some of the residual metals (which are usually the primary constituent of concern) would be an efficient use of resources to generate some of the metals the U.S. needs for strategic and economic purposes. Secondly, reusing historic mine wastes would achieve superior environmental results compared to the usual AML remedy (especially if EPA is involved), which is to move the contaminants to a newly constructed waste repository and cover them. Relocating the metal-bearing historic mine wastes does not reduce or remove the source of pollution. Furthermore, merely relocating the wastes into a new repository site creates the need for long-term maintenance and monitoring in order to reduce at the risk of leakage or other failure. Removing such metal from the environment and placing it into useful commerce is far more environmentally and economically beneficial than merely reburying such wastes in another place.

AMLs are generally located in highly mineralized areas. Not only are these highly mineralized areas the location of historic mining, they are likely to be the location for future mines as prices and technology allow. Therefore, there is significant potential for redevelopment of these sites or for discovery of a new, nearby mineral deposit. The discovery of a new deposit near an AML site or the redevelopment of an historic mine site , would require the full mine permitting process, (including an environmental analysis required by the National Environmental Policy Act if the project affects public land) and would be allowed only if the proposed new mine complied with all current standards of environmental protection. This new mine with its engineered, fully permitted and bonded beneficiation and processing circuit and mine waste disposal facilities would provide a new mine solution to old mine waste, while creating hundreds of new high paying jobs and generating federal, state, and local tax revenues.

Contrary to the assertions of mining opponents, the mining industry has no desire to use Good Samaritan legislation to avoid the mine permitting process or the application of current environmental laws and regulations that apply to today's modern mines. The Good Samaritan approval authority, through permit conditions, can easily prevent the misuse of a Good Samaritan permit.

10. Good Samaritan legislation should allow Good Samaritan actions at AMLs to qualify as off-site mitigation under the CWA for mining companies permitting new mines or expansion of existing mines. This would provide an additional incentive for a mining company to undertake a Good Samaritan cleanup while meeting the permitting requirements at new or expanded mines.

SUPERFUND IS NOT THE ANSWER:

Some Members of Congress and anti-mining groups argue that instead of focusing on Good Samaritan legislation, Congress should fund the Superfund program and EPA, under the Superfund program, should

address all Abandoned Mine Lands. In our opinion, this is a wrong-headed approach to mitigating and reclaiming historic abandoned mine lands.

Superfund does not have a very good track record at mine sites. Gold King in Colorado is Exhibit A. Superfund was not designed to address natural processes that result in contaminated watersheds at AMLs. In addition to the tragic EPA-caused spill at Gold King, 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 cited above, the cleanup costs have exceeded reasonable estimates by a magnitude of three to five times. 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.

Just outside the Bunker Hill Superfund site are many historic mining sites on Nine Mile and Canyon Creeks. 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 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.

I have visited these sites on five occasions and can personally attest to the outstanding remediation and reclamation on Canyon and Nine Mile Creeks, and that there has been substantial improvement in water quality as a result of these efforts. And, the work is done, 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. Our goal should be not just move the contaminants, but remove the contaminants and place them into useful commerce.

PREVIOUS GOOD SAMARITAN PROPOSALS:

Our members are familiar with all Good Samaritan legislation that has been drafted and introduced over the past fifteen years. While we applaud any and all efforts to advance the Good Samaritan concept, our analysis of most Good Samaritan legislation introduced in the past is that it is not intended for use by the mining industry. This not only disappoints our members, it would be a huge opportunity lost for the Nation and for the environment if mining companies are not allowed to utilize Good Samaritan

legislation. As mentioned above, the mining industry has the technical expertise, experience, and technology to effectively and efficiently assess the safety and environmental issues present at an AML site and to properly secure, reclaim and improve safety and environmental conditions at those sites. Moreover, creating a Good Samaritan law that recognizes the role that modern mining companies and other private-sector entities could play in improving environmental conditions at AML sites would reduce the amount of tax payer resources that will be needed to solve the AML problem

With respect to previous Good Samaritan bills, we believe H.R. 3203 introduced by the Chairman Lamborn in the 111th congress, and a similar bill, S. 1848 introduced by Senators Salazar and Allard in 2005 provide a good starting point for effective Good Samaritan legislation. We also believe these bills can and should be improved to ensure that they foster on-the-ground Good Samaritan projects at AML sites. Both bills already incorporate many of the ten concepts enumerated above, and could be improved by: 1) providing a mechanism for conducting site investigations without incurring environmental liability and without having to go through the full permitting process; 2) the PRP search should be significantly streamlined and eliminated when only private monies are funding the cleanup; and 3) any restrictions on the ability of a mining company or other Good Samaritan to mill historic mine wastes in order to remove metals from these materials should be eliminated.

The problems with some prior Good Samaritan bills and the reason why we believe they won't accomplish their stated intent can be summed up as follows: 1) the liability relief provision is too restrictive; 2) the PRP search requirements are too cumbersome and costly; 3) the permitting process is too complex and rigid; 4) a full PRP search and certification is required for privately funded cleanups; 5) the definition of a Good Samaritan is too limiting --merely appearing in the chain of title should not disqualify someone and federal land management agencies must be allowed to conduct Good Samaritan cleanups on the lands they manage; 6) the definition of eligible site does not include sites that pose only physical or safety hazards; and 7) there are too many restrictions on waste treatment. Significant on-the-ground Good Samaritan activities at AMLs are not going to take place under Good Samaritan legislation that contains these defects.

CONCLUSION:

Effective Good Samaritan legislation makes sense and can be a win-win-win-win for the environment, for the Good Samaritan, for the community, and for the Nation. We look forward to working with this committee to produce Good Samaritan legislation that will actually result in on-the-ground Good Samaritan cleanups at Abandoned Mine sites.

Respectfully submitted,

Laura Skaer

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Executive Director

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