Statement of Autumn Coleman, Program Manager, Abandoned Mine Lands Program, Montana Department of Environmental Quality on Behalf of the National Association of Abandoned Mine Land Programs and the Interstate Mining Compact Commission re. Oversight Hearing on Abandoned Hardrock Mines and the Role of Non-Governmental Entities

Introduction

Good afternoon Chairman Gosar, Ranking Member Lowenthall, and members of the Committee. My name is Autumn Coleman and I am Program Manager of the Abandoned Mine Lands (AML) Program within the Montana Department of Environmental Quality. I also serve as Vice President of the National Association of Abandoned Mine Land Programs (NAAMLP). Thank you for the opportunity to provide the State of Montana's perspective as well as NAAMLP's position on the role of non-governmental entities in hardrock AML work.

NAAMLP represents 31 state and Tribal AML programs across the nation. Many of these programs have earned delegations of authority from the federal government to implement national environmental laws such as the Surface Mining Control and Reclamation Act (SMCRA) and Federal Water Pollution Control Act (otherwise known as the Clean Water Act or CWA).

The topic of the hearing today is of great interest and importance to the states and Tribes represented by NAAMLP. Throughout the country our AML programs are working diligently to restore lands and waters impacted by legacy hardrock mining, but available resources are very limited in comparison to the scale of the problem before us. Every source of help is needed to contend with that problem, but current circumstances constrain the States' efforts and deter motivated, well-intentioned volunteers from assisting in that work. "Good Samaritan" policy holds the potential to unbind the state AML programs' hands and allow our potential volunteer partners to lend theirs.

We commend the Committee for its continuing efforts to establish an effective way for both state and Tribal programs and Good Samaritans to work toward restoring water resources impacted by historic mine pollution. We appreciate the opportunity to share our perspective on how this can be accomplished. My testimony today will address the current status of hardrock abandoned mine lands, the efforts underway to reclaim these sites and remediate their impacts, and the potential for a Good Samaritan program to encourage and enhance those efforts.

The Hardrock Abandoned Mine Land Problem

Background

The United States has a rich history of hardrock mineral mining. The role that gold, silver, and copper mining played in the settling of the American West and the rise of a fledgling industrial nation are the stuff of legend. Hardrock mining continues to this day to be a mainstay of vibrant economies throughout the country and especially in the West, but today's mining is conducted very differently than it was in the past. Today's mines are required to be fully reclaimed and impacts are carefully monitored, but in a time prior to modern day controls and understanding of environmental impacts, mines were often abandoned in disrepair. Many of those historic mining sites have enduring impacts today, which has resulted in a massive environmental and economic problem.

Following the passage of comprehensive national environmental laws in the 1970s, the states and Tribes have largely taken the lead in fashioning and implementing effective programs for the regulation of mining and its impacts, including reclaiming and restoring lands and waters impacted by historic abandoned mines. Every year our AML programs are working to reclaim open mine pits, stabilize cave-ins and landslides, close mine shafts, remove left behind equipment and mining waste, and restore rivers and streams impacted by acid mine drainage (AMD). The safety hazards associated with these sites result in injuries and even deaths each year, and environmental impacts like AMD are incredibly damaging in their own right. While most will recall visions of orange rivers following the blow out of a mine pool at the Gold King AML site, few realize that there are thousands of similar sites scattered throughout the West. In fact, many times the amount of impaired water released during the Gold King event drain out of abandoned mines throughout the country every day. These water impairments degrade ecosystems and have widespread adverse economic impacts, including the loss of recreational fisheries and contamination of water and irrigation supplies.

While it is difficult to put an exact number on total hardrock AML costs or to produce a perfectly accurate inventory of remaining sites, there is no question that the hardrock AML problem is massive and pervasive, and would be counted in tens of billions of dollars. Today's environmental laws are meant to hold polluters to account, but because the historic mining in question happened so long ago, there are no potentially responsible parties available to pay for their cleanup; these sites are an unfunded public cost. Abandoned mines are everyone's problem but no one's responsibility.

Hardrock AML Inventory

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 national inventory of the hardrock AML problem. 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. The AML programs are therefore generally well positioned to direct limited reclamation dollars to best protect public health and safety and the environment without the need for significant enhancements to AML inventories. To the extent that the Committee finds additional inventorying efforts expedient for policy-making, separate funding would ideally be provided for those efforts. Otherwise, the states and Tribes generally find that the best use of limited hardrock AML funding is to accomplish as much reclamation and restoration work as possible.

The state of Montana's hardrock AML inventorying efforts provide a good case study. In the early 1990's Montana conducted a comprehensive inventory of abandoned hard rock mines and began work in earnest to close hazardous mine openings. Of the 3,500 abandoned hard rock mines in the inventory, over 300 of those were designated as high priority sites due to the risk to human health and the environment from heavy metals and arsenic. As part of the inventory, Montana tallied 217 discharging adits. Between the mine waste left in creeks and rivers in Montana and the acid mine drainage coming from those adits, Montana has almost 2,500 miles of rivers and streams impacted by metals and arsenic from abandoned mines. New abandoned mines are being discovered as people move further into the wildland-urban interface and as forest fires move through and expose new abandoned mine hazards previously unknown.

Funding for Hardrock AML

Current state and Tribal agencies work 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 over the years. 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 rely on their federal partners. Unfortunately, most of these existing federal and state 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 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 is making a difference.

To make more progress with hardrock AML there is no question that the greatest need is funding. Recognizing the potential economic, environmental and social benefits of remediating lands and streams impaired by abandoned hardrock mines, states, tribes, municipalities, federal agencies, volunteer citizen groups and private parties have come

together across the West to try to clean up some of these sites. In Montana, our local governments and Good Samaritan partners have the capacity to raise funds inaccessible to the state. Leveraging outside grant funds with state and federal funds is the only way we can afford these cleanups. However, due to questions of liability, many Good Samaritan efforts, as well as the states' and tribes' own efforts, have been stymied. To encourage public-private partnerships and empower state and Tribal AML programs, first we need to solve the thorny legal problem that is keeping private resources on the sideline, increasing the burden on public funds, and prolonging harm to our citizens and environment.

The Need for a Good Samaritan Program

The Clean Water Act (CWA) was designed to clean up our waterways and safeguard the health of our citizens and environment, and the country is undoubtedly a better place as a result. It is therefore a great irony that this law, which was meant to facilitate water quality, now stands in the way of water quality improvements at AMD sites. As a cornerstone of Federal Environmental Law, the CWA is intentionally very strict in the restrictions and penalties directed at those who impact our Nation's water resources. As an unintended consequence of that strict design, in particular its purposefully stringent and inflexible standards for water treatment, CWA requirements do not comport well with the realities of AMD treatment. With regard to this issue, John Whitaker, a White House staffer who played an integral role in the passage of the Clean Water Act, recalls the following:

> *"When I and other White House staffers responsible for environmental initiatives during the Nixon Administration recommended to the President new water pollution control strategies for congressional consideration, our focus was primarily on sewage treatment and industrial effluent, not the acid mine drainage problems from abandoned mines. We should have had more foresight…We did not envision at the time that the day would come when the zero discharge provision would prevent Good Samaritans from cleaning up acid mine drainage…"*[1]

This dilemma has been confirmed by the Environmental Protection Agency on many occasions, and is summarized well by the following quote from an EPA Administrator's testimony before Congress in 2006:

> *"Under the CWA, a party may be obligated to obtain a discharge permit which requires compliance with water quality standards in streams that are already in violation of these standards.... Yet, in many cases, the impacted water bodies may never fully meet water quality standards, regardless of how much cleanup or remediation is done. By holding Good Samaritans accountable to the same cleanup standards as polluters or requiring strict compliance with the highest*

[1] "Cleaning Up Abandoned Hardrock Mines In The West: Prospecting for a Better Future"- Limerick, Ryan, Brown, and Comp, Center for the American West

water quality standards, we have created a strong disincentive to voluntary cleanups. Unfortunately, this has resulted in the perfect being the enemy of the good."[2]

The crux of the problem is that the federal statutory paradigm for treating AMD-impacted water is not well-suited to the unique characteristics of these sites. The fundamental issue with AMD treatment is that impacted waterways are by definition already impaired, and in the case of abandoned mines, the originators of the pollution have long since gone out of business. Even so, due to joint and several liability under the CWA, any party who re-affects an AMD-impacted site risks being held permanently responsible for fully eliminating the existing discharge, even where the pollution is the result of legacy mining, the project is significantly improving water quality, the party in question has no connection to the pollution, and no recklessness or negligence is exhibited.

The EPA has acknowledged and attempted to mediate the conflict between AMD treatment and the CWA in the past, but the Agency's efforts have not meaningfully facilitated progress. The EPA's guidance memoranda of 2007[3] and 2012[4] regarding Good Samaritan involvement in such projects, and the "comfort letters" issued by the Agency pursuant to that approach, unfortunately led to very few additional projects being undertaken. The primary remaining obstacle is that these projects are still potentially subject to citizen suit liability under the CWA. This means that even where these projects are conducted under established procedures, condoned by the EPA and/or the state NPDES authority, and are improving water quality by reducing pollution loading, they could still be sued by a third party and be assessed immense, perpetual liability. State and Tribal AML programs could similarly still be assessed liability and compelled to take immediately required, expensive, tax-funded action to return a given site to an impracticable condition, which already strained state budgets must avoid.

There can be little question that obstacles posed by the CWA to the treatment of AMD-impacted water have significantly slowed progress with such projects throughout the country. State and Tribal AML programs must choose between forgoing these projects or proceeding and exposing themselves to significant liability risks. While the need for resolution of these issues has been widely agreed upon for some time, the specifics of the ideal solution have long been debated - and it is clear that debate is stalling desperately needed water treatment.

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[2] Benjamin H. Grumbles, Assistant Administrator for Water, U.S. Environmental Protection Agency, Testimony before the Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, March 30, 2006, pp. 2-3.

[3] "Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans," June 6, 2007

[4] Clean Water Act Sec. 402 National Pollutant Discharge Elimination System (NPDES) Permit requirements for " Good Samaritans" at Orphan Mine Sites," Dec 12, 2012

Examples of the Need for Good Samaritan Protections in Montana

The Montana AML Program in partnership with the Powell County Conservation District and Trout Unlimited was successful in raising the funds to reclaim an abandoned lead and silver mine in the mountains near the state capital. This project had been shelved by the Montana AML Program due to insufficient funding for hardrock abandoned mines, but our Good Samaritan partners were able to secure the funding needed to resurrect it. In 2016, the Montana AML Program and TU completed the Lilly Orphan Boy Mine Reclamation Project. We removed toxic mine waste from the banks and floodplain to restore Telegraph Creek, we stabilized a dangerous mine waste embankment, closed a hazardous mine opening and protected a historic headframe. While this project speaks to a successful partnership between the state and Good Samaritans, the work at the Lilly Orphan Boy Mine is still not done. In the middle of the beautifully restored floodplain flows acid mine drainage from an adit. The water quality below the mine has seen significant improvement following the removal of the mine waste in the creek, but there are still impacts from acid mine drainage. Both TU and the Montana AML Program have walked away from addressing these draining adits because of the concerns over the Clean Water Act liability.

Treatment of acid mine drainage is a multi-million dollar commitment which neither the state nor their partners can raise on a consistent or predictable basis. Less expensive options, such as passive wetland treatment cells and automatic lime dosers, will generally not meet all in- stream water quality standards or discharge permit parameters. The other mechanism for eliminating acid mine drainage is to plug mine openings, but those strategies are also costly and may present safety concerns. The result is that adits continue to drain into rivers and streams impacting fisheries and hampering economic development.

Montana continues to address abandoned mine lands as best it can given funding limitations and potential liability for discharge exceedances. In instances where state and Tribal AML programs are able to proceed despite liability concerns, some success has been found in source removal actions to address water quality. For example, Montana recently recommended de-listing Soda Butte Creek, a tributary to the Lamar River in Yellowstone National Park, for metals following a tailings impoundment (dam) removal project. This de-listing of an impaired waterbody for metals following abandoned mine reclamation is the first of its kind in Montana and is critical for fisheries in Yellowstone National Park. Much more of this type of progress could be made if the states, tribes, and their Good Samaritan partners could be provided consistent, reasonable relief from unnecessary liability.

Pennsylvania Example of Successful State-Level Good Samaritan Program

We have seen the positive results from an effective approach to AMD treatment in Pennsylvania, which enacted its own Good Samaritan law to provide protections related to state clean water requirements for groups and individuals who were not legally

responsible but who voluntarily undertook AML reclamation or AMD treatment projects. Pennsylvania recognized long ago that with the availability of these volunteer efforts and advances made in our understanding of mine drainage, many of the State's abandoned coal mine AMD discharges could be eliminated or improved at little or no cost to the Pennsylvania tax-payer if only the potential for undeserved liability could be addressed.

To that end, Pennsylvania enacted its Environmental Good Samaritan Act (EGSA) of 1999[5], under which 79 AMD treatment projects have been undertaken in various partnerships between the Commonwealth, local governments and municipal authorities, individual community supporters, corporations, watershed associations, and conservancies. Much like previous federal Good Samaritan proposals, projects eligible under the EGSA must abate water pollution resulting from abandoned mine lands and eligible participants must meet certain conditions demonstrating that they and the project are worthy of liability protections offered by the program. These projects are spread among 20 counties and 53 distinct groups, and the majority are active today. State-level liability protections have enabled these projects to occur without risk of undue liability under state law, but risks remain for the Commonwealth and their partners under federal law, and still more projects could have been pursued if not for the remaining specter of liability.

Pennsylvania's experience in the almost 20 years since the passage of the EGSA demonstrates that there are countless opportunities for Good Samaritans to assist the AML programs, especially in the treatment of AMD-impacted water. The Commonwealth and its partners' work under the EGSA provides a proof of concept for the beneficial, responsible participation of such groups in the AML programs' work.

Considerations in Crafting Good Samaritan Legislation

Over the course of the past fifteen years, several Good Samaritan bills have been introduced in the U.S. Congress, each of which offered a unique approach. From the states' and Tribes' perspective, we have several recommendations that we believe should be considered in any Good Samaritan legislative effort. We offer the following considerations based on our AML programs' decades of first-hand experience contending with hardrock AML issues, our long-time participation in the Good Samaritan policy debate, the lessons learned through Pennsylvania's successful state-level Good Samaritan program, and the recent success of the Community Reclamation Partnerships Act.

To summarize the preceding section: the specter of undeserved liability is constraining much needed hardrock AML work. At the center of concern is the simple fact that, as noted above, NPDES permits are not well-suited for treating AMD-impacted water. The key to resolving this issue is bringing clarity and practicality to any Clean Water Act compliance responsibilities borne by the States and potential Good Samaritan partners as they conduct AMD water treatment work. The states' tribes' experience demonstrates that this can be accomplished while maintaining uncompromising care in how these

[5] Title 27 Pennsylvania Consolidated Statutes Annotated Sections 8101 - 811

projects are conducted. Through commitment to that goal and cooperation among stakeholders, a process can be designed that finds the necessary balance between the accountability that must be maintained and the flexibility that must be provided to allow AMD work to move forward.

The Need for Reasonableness

To achieve sensible, effective Good Samaritan policy, the focus must be on designing a system that is immanently reasonable. We must recognize that the potential Good Samaritan AMD projects in question are fundamentally different from other classes of projects and therefore should not require the same level or type of regulatory requirements. The waters in question are already impaired and the responsible parties are long gone, meaning that certain aspects of the CWA are inordinately strict in the context of these projects; most notably the zero discharge standard and the application of perpetual responsibility. Rather than focus on achieving impossible perfection or holding no-longer-existent originators of the pollution to account, the basic standards for eligible Good Samaritan projects should be simple: achieving improvements in the environment. In this way, Good Samaritan legislation would uphold the purposes of the CWA and further its effectiveness by helping to fulfill its essential goal of improving water quality.

Toward the goal of reasonable Good Samaritan policy, perhaps the most important recognition needed is that partial remediation is acceptable. Some abandoned mine problems are so intractable that it is not possible to achieve "total cleanup" even with today's advanced technologies, but a "limited" cleanup can result in very significant environmental improvement. We also know that, in some circumstances, even where total cleanup is technically possible, at some juncture the cleanup effort reaches a point of diminishing returns and the money would be better spent on addressing other sites.

These realities of AMD treatment have led many state AML programs, particularly in the East, to adopt an approach that attempts to maximize the number of discharges that receive treatment to the highest standard practicable, with particular focus on supporting biological and other functions of the water resource. Decisions regarding water treatment are based on practical limitations such as available space, technology options, landowner cooperation, and cost. While these projects often do not strictly adhere to NPDES water quality based effluent requirements, they nevertheless significantly improve water quality in the receiving streams, the aggregate effect of which produces drastic improvements in overall health of the greater watershed at a comparatively low cost. This approach has led to great strides in restoring AMD-impacted watersheds, as well as for the community health and livelihoods that depend on those watersheds. Mine drainage at these sites is being treated, pollution is substantially reduced, and noticeable water quality improvements are being made, and yet these efforts are still being constrained. It would be shortsighted policy to continue to disallow this type of partial treatment strategy when so much good can come as a result.

Another key recognition that must be made is that groups conducting volunteer clean ups should not be held as permanently responsible for the sites at which they conduct their work. The courts have created an expectation that states and volunteer groups affecting an existing source of water pollution may be held as "operators" under the Clean Water Act and compelled to comply with full requirements of and indefinite liability associated with an NPDES discharge[6] [7], even where those requirements are clearly unreasonable and the liability clearly undeserved with respect to the parties in question. Under these circumstances, states, tribes and potential volunteers are heavily disincentivized from taking on cleanup projects, especially where the expectation is that full NPDES requirements cannot be met. Rather, Good Samaritan groups should only be responsible for their own work on the site. As long as that work is positively affecting the environment and no negligence is committed, whatever preexisting pollution remains should not be considered the Good Samaritan's responsibility. The Clean Water Act policy that anyone who affects an impaired site is held responsible for the entirety of the pollution in perpetuity is meant to hold polluters to account, but in the case of Good Samaritan projects the groups in question are decidedly not polluters. Ensuring that only worthy groups receive designation as Good Samaritans is certainly a key consideration in Good Samaritan policy, and it is the states' and tribes' experience that our AML programs are well-equipped to make this distinction appropriately. Once a Good Samaritan group's innocence with respect to the site can be established, it should be understood that holding them to account for past pollution is unhelpful - rather than encouraging higher water quality it precludes any improvement at all.

Furthermore, if the protections provided to Good Samaritan groups would have end dates, meaning that protections would only apply during the time frame of the work on the project, many potential Good Samaritans will be reluctant to engage in activities for which they might incur liability beyond the termination date of work, as would be the case with water treatment projects. Good Samaritans must be supplied with liability protection in perpetuity in order to ensure that they can afford to undertake the project. Similarly, an expectation that the applicant has sufficient financial resources to carry out all operation and maintenance activities related to the project may be prohibitive. Most potential Good Samaritan groups, including state and local governments, will not have the type of financial resources available to fulfill or guarantee this requirement.

A third important recognition is that onerous, complex requirements for achieving status as a Good Samaritan and securing project approval will at some point be counterproductive to encouraging more work. There has been a tendency in past Good Samaritan proposals for the requirements to become very similar if not nearly identical to that of standard NPDES permits, which would ultimately mean little if any effective difference from the status quo would be achieved.

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[6] Pursuant to the Fourth Circuit Court of Appeals decision in *West Virginia Highlands Conservancy v. Huffman* 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 AML projects being undertaken by the states and tribes under SMCRA.

[7] It is important to note that AML reclamation is handled separately and distinctly from bond forfeiture sites, and that these sites, and any companies experiencing bond forfeiture would not expectedly be eligible for participation under a Good Samaritan Program

Potential Good Samaritans, in particular non-governmental organizations (NGO's), tend to have limited funding, often in the form of discrete grants. They often acquire funding for watershed restoration projects in small incremental amounts over long periods of time. Overly burdensome permitting requirements will therefore be cost-prohibitive, as many NGO's will not be able to afford compliance with overly elaborate permitting requirements. Much of this permitting activity would have to be completed before the project is approved and many NGO's will be reluctant to expend a substantial amount of their limited grant funding to develop a project that may never be implemented. States similarly must be very careful in how they proceed with their limited hardrock AML funding. For these reasons it must be acknowledged that for Good Samaritan policy to be effective, there must be careful attention paid to constructing a system that is not unduly burdensome on states or their potential volunteer partners. A reasonable balance must be struck between ensuring the project will proceed properly and that it will be possible to do the project at all – and the states' experience demonstrates that this balance is achievable.

As an alternative to the stand-alone permitting system often proposed by past legislation, we suggest consideration of a procedure similar to that utilized by the Commonwealth of Pennsylvania's successful Good Samaritan program. The EGSA utilizes letters of approval that apply to a specific AML or AMD project rather than permits, and is generally more workable and less cost-prohibitive to the efforts of potential Good Samaritans. For example, grant applications include descriptions of the proposed projects, but are not required to submit detailed engineering plans until the basic aspects of the project have been approved, thereby preventing the potential Good Samaritan group from wasting limited resources. Additionally, EGSA approval provides Good Samaritan projects involving treatment systems that require long-term operation and maintenance perpetual protection from liability, rather than only during the duration of a permit, which quells concerns with long-term liability.

A State-lead Partnership Model; Working within Existing Frameworks

There are many state and Tribal agencies throughout the country whose mission is to reclaim hardrock AML sites and restore AMD-impacted water. While the focus of Good Samaritan policy discussions is generally on protecting volunteer groups, providing protection for these state and Tribal agencies is an equally critical, if not more fundamentally needed step in encouraging this type of work. The agencies that have been ordained for this specific purpose, and the environmental law frameworks they work within, are not being allowed to fulfill the mission they were designed to do. The circumstances described above continue to discourage if not totally preclude many state's and Tribe's ability to treat water under their dedicated AML programs; and even in States that have been able to proceed with some amount of water treatment work, these circumstances have been a severely complicating factor. Recognizing this, we recommend that Good Samaritan policy first seek to establish a means for the states and Tribes to fulfill their missions and conduct this work free from the unhelpful aspects of the CWA. Building on that notion, working through existing state and Tribal regulatory

frameworks to the extent possible and emphasizing a state-lead partnership approach will lead to optimal results for potential Good Samaritan legislation.

In accordance with the principles of state primacy contained in laws such as SMCRA and the Clean Water Act, it is essential that Good Samaritan programs be administered by state and tribal agencies. The states and tribes best understand the specific complexities associated with abandoned mine lands within their borders and tend to have better working relationships with potential Good Samaritans. Our experience indicates that reliance on the state and Tribal AML programs is crucial to achieving workable Good Samaritan policy. For example, one of the key components of the Pennsylvania EGSA program's success is its reliance on the State AML program's long-standing expertise in their field. Under the EGSA, all activities related to a given project proceed under the guidance and approval of the PADEP, which utilizes its expertise and long resume of successful water treatment projects to appropriately adjust requirements to match the scale and complexity of the proposed project and to ensure that only well-conceived projects move forward. PADEP works very closely with Good Samaritan volunteers to assist them in the process of assessing circumstances, receiving necessary approvals, designing a project, and conducting and overseeing work on the project.

Optimal federal Good Samaritan legislation will seek to emulate this type of partnership approach, which was also utilized in the Committee's recent Community Reclamation Partnerships Act (H.R. 2937). Partnership between state agencies and Good Samaritan groups is of great mutual benefit – Good Samaritan groups can be guided through the process of pursuing a project with the unique experience of the AML programs, and the program is able to harness the passion and financial resources available in these groups toward their mutual goals of improving water quality.

The Scope of Eligibility

The scope of liability protection is another key consideration for Good Samaritan policy. The states and Tribes have several recommendations related to the necessary scope of protection intended to ensure that Good Samaritan policy has its intended effect of meaningfully facilitating AMD treatment work.

For example, Good Samaritan project eligibility should be extended to projects undertaken on state, Tribal, and private lands in addition to federal lands. Pollution problems know no such boundaries and must be addressed wherever they occur.

Further to that point, it has been the states' experience, in particular through Pennsylvania's EGSA, that the extension of protections to innocent landowners is critical to a viable Good Samaritan program. Many landowners will not cooperate if they are not distinctly protected, because if not, they risk being held permanently responsible for untenable water treatment requirements simply by allowing a project to take place on their property. The inclusion of language speaking directly to the potential liabilities of landowners will help ensure the success of Good Samaritan legislation.

Many previous Good Samaritan legislative efforts have focused only on liability with regard to the Clean Water Act. While this is certainly the most pronounced issue, it should be noted that Good Samaritan remediation efforts may also be stifled by the prospect of incurring liability under a variety of other federal environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), depending on the situation. The key here is that if potential Good Samaritans do not feel completely assured of liability protection related to these additional laws, many potential Good Samaritan groups will have little choice but to forego working at sites where the risk is simply too great a threat to their organization's financial health. A system that allows liability coverage to be tailored to the situation and the treatment strategy at hand would greatly help to alleviate these concerns.

The considerations recommended above will result in more prevalent and effective AMD water treatment work and mine waste removal actions by the state and Tribal AML programs, additional engagement of private funding resources in Good Samaritan groups, and a more effective overall implementation of Federal Environmental Law with respect to these sites. Without such improvements, the difficulties in CWA's application to abandoned AMD pollution will continue to constrain and delay much-needed progress.

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 (and other federal environmental law) liability protection for prospective Good Samaritan groups and state and Tribal AML programs holds immense potential benefit. The states' experience demonstrates that the Good Samaritan idea works, but the federal-level obstacles to further enfranchisement of these groups must be removed. In a time when funding available from SMCRA is approaching expiration, and Federal Budget proposals are continuing to scale back on our federal partners' hardrock AML funding, help from Good Samaritans is more needed than ever. As Congress continues to consider how to contend with the multi-billion dollar public cost represented by remaining hardrock AML problems, it is clear that every source of help is needed. NAAMLP would welcome the opportunity to work with the Committee in designing balanced, sensible, effective Good Samaritan legislation.

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