TESTIMONY OF
STEPHEN L. JOHNSON
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

June 14, 2006

Good morning Mr. Chairman and Members of the Committee. I am honored to appear before you today to testify on one of the most important environmental issues, and opportunities, facing the United States -- legacy impacts from abandoned mines and the innovative efforts we can all take to help clean up pollution from abandoned mines. The President is committed to accelerating environmental progress through collaborative partnerships, and the Good Samaritan legislation before the Committee today is the embodiment of this cooperative conservation philosophy.

First, I want to thank you, Mr. Chairman, for introducing, by request, S. 2780 -- the "Good Samaritan Clean Watershed Act." S. 2780 is the Administration's legislative proposal to encourage voluntary cleanup of abandoned mines. I also want to commend Senator Allard and Senator Salazar and their colleagues for their legislative efforts to date. Finally, I would be remiss if I failed to acknowledge the long-term efforts of the Western Governors Association to address this issue as well. We hope that this Committee reports

out, that Congress passes, and that the President signs into law S. 2780, or similar legislation, this year. We pledge to work with you to make that happen.

The Abandoned Mine Problem

Inactive or abandoned mine sites can pose serious public safety and environmental hazards. According to estimates, there are over half a million abandoned mines nationwide, most of which are former hardrock mines located in the western states, which are among the largest sources of pollution degrading water quality in the United States. Acid mine drainage from these abandoned mines has polluted thousands of miles of streams and rivers, as well as ground water, posing serious risks to human health, wildlife, and the environment. This problem can affect local economies by threatening drinking and agricultural water supplies, increasing water treatment costs, and limiting fishing and recreational opportunities.

Challenges To Cleaning Up Abandoned Mines

Mine drainage and runoff problems can be extremely complex and solutions are often highly site specific. In many cases, the parties responsible for the pollution are either insolvent or no longer available to participate in the remediation. However, over the years, an increasing number of "Good Samaritans," not responsible for the pollution, have volunteered to clean up these mines. Through their efforts to remediate these sites, we can help restore watersheds and improve water quality. Unfortunately, as a result of legal

obstacles, we have been unable to take full advantage of opportunities to promote cooperative conservation through partnerships that will restore abandoned mine sites throughout the United States.

The threat of liability, whether under the Clean Water Act (CWA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), can be an impediment to voluntary remediation. A private party cleaning up a release of hazardous substances may become liable as either an operator of the site, or as an arranger for disposal of the hazardous substances. As well, under the CWA, a party may be obligated to obtain a discharge permit and comply with the permit's effluent limitations, which must be as stringent as necessary to meet water quality standards. The potential assignment of liability occurs even though the party performing the cleanup did not create the conditions causing or contributing to the degradation. Addressing this liability threat will encourage more Good Samaritans to improve the water quality of watersheds impacted by acid mine drainage.

Remediation of these sites can be complex and extremely resource intensive. Yet even partial cleanups by Good Samaritans will result in meaningful environmental improvements and will help accelerate achieving water quality standards. By holding Good Samaritans accountable to the same cleanup standards as those that caused the pollution or requiring strict compliance with 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. EPA strongly believes that liability should rest squarely on parties responsible for the environmental damage, not on those who are trying to clean it up. EPA has seen this concept work successfully all across the country to clean up and restore brownfield properties to beneficial reuse. By removing this threat of liability, we will encourage more voluntary and collaborative efforts to restore watersheds impacted by acid mine drainage.

Let me emphasize, however, that encouraging Good Samaritan cleanups is not about lowering environmental standards nor letting polluters off the hook. Instead, this legislation will hold Good Samaritans to a realistic standard that ensures environmental improvement. And those responsible for the pollution, if still in existence, will remain accountable, consistent with the Agency's "polluter pays" policy.

Cooperative Conservation and EPA's Good Samaritan Initiative

President Bush's August 2004 Executive Order on Cooperative Conservation directs federal agencies to ensure -- when taking actions that relate to the use, protection, enhancement, and enjoyment of our natural resources -- that the agencies will engage in collaborative partnerships with state, local, and tribal governments, private for profit and nonprofit institutions, and other non-government entities and individuals. Last August, as part of the President's Cooperative Conservation conference, I announced our Good Samaritan

Initiative as a means to encourage more effective voluntary efforts to remediate damage from abandoned mines.

This Good Samaritan Initiative accomplishes the objectives of cooperative conservation by clearing legal roadblocks and empowering communities and grass-roots organizations to confront environmental challenges. The initiative equips America's eager army of citizen conservationists with important tools to protect our watersheds.

The first project under the Agency's Good Samaritan Initiative is the cleanup of an abandoned mine in Utah's American Fork Canyon. We are working with the volunteer group Trout Unlimited (TU) and the private landowner who did not cause the pollution. This project will restore a watershed that has been impacted for well over a century, improving the water quality and the habitat of a rare cutthroat trout species. Restoration of the American Fork is part of an ambitious multi-year effort by TU to draw attention to the problem of abandoned mines in the western United States while also identifying solutions. EPA has learned from the experience of the TU project and is putting those lessons to good use. This is a win-win situation for the environment and all involved and shows how cooperative conservation -- placing a premium on collaboration and cooperation over confrontation and litigation -- can accelerate environmental protection.

Good Samaritan Clean Watershed Act

The purpose of the Administration's "Good Samaritan Clean Watershed Act" bill is to restore watersheds and improve water quality by encouraging remediation of inactive or abandoned hardrock mining sites by persons who are not otherwise legally responsible for such remediation. In the spirit of cooperative conservation, this bill recognizes that environmental progress can be accelerated by encouraging citizens and government at all levels to achieve environmental results through cooperation instead of confrontation. This bill is one of several cooperative conservation legislative proposals that will be submitted by the Administration this year.

This bill establishes a streamlined permit program that would be administered at the federal level by EPA, and which can be administered by states or tribes if certain conditions are met. A permit issued under this bill would allow a Good Samaritan to clean up an inactive or abandoned mine site and would offer targeted protection from CWA or CERCLA liability for the actions taken under the permit. As drafted, the bill is a freestanding piece of legislation and not an amendment to any existing federal environmental statute.

The bill also contains specific requirements regarding who is eligible for a Good Samaritan permit, the sites for which permits may be issued, and what must be included in the permit. Importantly, the bill encourages all volunteers,

whether a private citizen, municipality, company, watershed group, or non-profit organization, to participate as a “Good Samaritan” provided that they did not contribute to the creation of the pollution, are not responsible under federal, state or tribal law for the cleanup, and do not have an ownership interest in the property.

I want to take a moment to highlight a number of additional safeguards the bill provides to ensure that abandoned mines will be properly remediated:

< It requires a thorough “due diligence” evaluation of a Good Samaritan and proposed project, ensuring that the Good Samaritan is a “good actor” who has a history of good environmental compliance elsewhere and has sufficient financial resources to complete a project;

< It requires a determination that a project will result in improvement to the environment before any permit for the project is issued;

< While it provides that permits shall not authorize the extraction of new mineral resources, it allows the recycling of historic waste piles if directly related to the cleanup, and only after such activities are identified in a permit application and approved;

< It limits liability relief to only those activities undertaken pursuant to a permit issued under the Act;

< It nullifies liability protection under the Act where an applicant engages in fraud or provides materially misleading information;

< It requires robust public participation, including a mandatory public hearing before a permit is issued; and lastly,

< It provides ongoing federal oversight and enforcement of cleanup activities.

Conclusion

Thank you, Mr. Chairman, for the opportunity to discuss with you the Administration's Clean Watershed Good Samaritan Act legislation. The issue of abandoned mine remediation has been discussed and debated for well over a decade. A comprehensive solution is long overdue. We applaud bipartisan efforts in both houses of Congress to address the issue, and we look forward to working with you and your colleagues to get this important environmental legislation to the President's desk as soon as possible.

* * *