



WESTERN GOVERNORS' ASSOCIATION

Janet Napolitano
Governor of Arizona
Chair

M. Michael Rounds
Governor of South Dakota
Vice Chairman

Pam O. Inmann
Executive Director

Headquarters:
1515 Cleveland Place
Suite 200
Denver, Colorado 80202-5114

303-623-9378
Fax 303-534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001

202-624-5402
Fax 202-624-7707
www.westgov.org

June 13, 2006

The Honorable James M. Inhofe
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Chairman Inhofe:

The Western Governors commend you for introducing S. 2780, "Good Samaritan Clean Watershed Act." We strongly support the efforts of the U.S. Environmental Protection Agency in developing this legislation, and believe it represents a solid basis for moving forward. There are a limited set of issues that we would like to discuss with you and the Committee, but we are confident that these issues can be easily resolved. A description of the issues is attached.

The Western governors have consistently identified the Good Samaritan provision as one of the high priorities regarding water quality. Abandoned or inactive mines are responsible for many of the greatest threats and impairments to water quality across the Western United States. Thousands of stream miles are severely impacted by drainage and runoff from these mines, often for which a responsible party is unidentifiable or not economically viable.

Regulatory approaches to address the environmental impacts of abandoned or inactive mines are often fraught with difficulties, starting with the challenge of identifying legally responsible and financially viable parties for particular impacted sites. Mine operators responsible for conditions at a site may be long gone. The land and mineral ownership patterns in mining districts are extremely complex and highly differentiated. The surface and mineral estates at mine sites are often severed and water rights may exist for mine drainage. It is not uncommon for there to be dozens of parties with partial ownership or operational histories associated with a given site.

States are very interested in undertaking and encouraging voluntary "Good Samaritan" remediation initiatives, i.e., cleanup efforts by states or other third parties who are not legally responsible for the existing conditions at a site, however, "Good Samaritans" currently are dissuaded from taking measures to clean up the mines due to an overwhelming disincentive in the Clean Water Act. To date, Environmental Protection Agency (EPA) policy and some case law have viewed abandoned or inactive mined land drainage and runoff as problems that must be addressed under the section 402 National Pollutant Discharge

The Honorable James M. Inhofe
June 13, 2006
Page 2

Elimination system (NPDES) permit program. However, there is currently no provision in the Clean Water Act which protects a "Good Samaritan" that attempts to improve the conditions at these sites from becoming legally responsible for any continuing discharges from the mined land after completion of a cleanup project. This potential liability is an overwhelming disincentive to voluntary remedial activities to address the serious problems associated with inactive or abandoned mined lands.

The Western states have found that there would be a high degree of interest and willingness on the part of federal, state and local agencies, volunteer organizations and private parties to work together toward solutions to the multi-faceted problems commonly found on inactive mined lands if an effective Good Samaritan provision were adopted. Consequently, for over a decade Western states have participated in and encouraged—in cooperation with Congressional Offices, the environmental community, the mining industry, EPA, and other interested parties—efforts to develop appropriate Good Samaritan legislation. The Western Governors' Association and the Western States Water Council have focused historically on amending the Clean Water Act in order to eliminate the current disincentives that exist in the Act. However, the Western States believe that there could be benefits to addressing potential liabilities under CERCLA as well.

Again, the Western Governors commend you for introducing S. 2780, "Good Samaritan Clean Watershed Act." We would welcome the opportunity to work with you to clarify a limited set of issues outlined in the attached document. We look forward to working with the Senate Environment and Public Works Committee, Senator Salazar, Senator Allard and the sponsors of S.1848, Representative Udall and Representative Beauprez and the sponsors of H.R.1266, EPA, the mining industry, environmental groups and other interested parties to see Good Samaritan legislation enacted this year.



Janet Napolitano
Governor of Arizona
WGA Chair

Sincerely,



Mike Rounds
Governor of South Dakota
WGA Vice Chair

cc: The Honorable James Jeffords, Ranking Minority Member
Senate Environment & Public Works Committee

The Honorable Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency

Issues in S. 2780 for which WGA Seeks Clarification

- *Scope of Liability Protection* – WGA supports allowing liability relief to Good Samaritans for both the Clean Water Act and CERCLA (as contained in the bill under the definition of “Environmental Laws”). However, we would like clarification of how the CERCLA liability relief would function under the bill.
- *Federal Lands* – WGA would like clarification regarding the extent to which Good Samaritan cleanups would be allowed on federal lands, and the potential role of federal agencies in Good Samaritan projects.
- *Early Termination of a Permit* – WGA would like clarification regarding the standards for cleanup in the event of early termination, .e.g. “no worse than before,” and clarification of whether the permitting agency would have the authority to set such standards.
- *Implementing Regulations* – WGA would like clarification of whether EPA would be required to issue regulations before Good Samaritan permits could be issued.