

**ISSUE :** Current federal laws and policies do not allow a process for "Good Samaritans" to improve water quality through clean-up or mitigation of acid mine drainage from abandoned mines that involves the long-term discharge of water without fear of liability, becoming financially responsible, and subject to citizen lawsuits if improved water quality does not fully meet Clean Water Act/TMDL standards.

**POLICY STATEMENT:** NACo and Counties recognize that there is an immediate need to eliminate disincentives, and establish incentives and clearly limiting liability for voluntary, cooperative efforts aimed at improving and protecting water quality impacted by historic mining activity where there is no financially responsible party. Counties support immediate creation of a process or system by the EPA to provide bona fide "Good Samaritans" assurance they will not incur long-term legal liability for discharges at abandoned mine sites where they have performed cleanup work, provided that the cleanup work is done in accordance with applicable agreements and measurably improves water quality, even if Clean Water Act/TMDL standards cannot be achieved. A "Good Samaritan" is an entity (a person, group, consortium, NGO, etc.) with no legal responsibility for the site, pollution at the site, or prior mining activity at the site.

**BACKGROUND:** Over the past couple decades several different pieces of federal legislation have been introduced in the House and the Senate designed to address the CERCLA and Clean Water Act liability for existing conditions at AML sites. The concept is to provide appropriate liability relief to bona fide "Good Samaritans" that voluntarily clean up acid mine drainage at abandoned hard rock mines and mitigate environmental hazards rather than just physical hazards.

There are hundreds of thousands of abandoned mines in the United States with acid drainage issues that are degrading water quality, making it more expensive to provide potable water, damaging potential fisheries, causing environmental degradation, and making it impossible for even small, modern, appropriate mining to take place because a discharge permit cannot be obtained by mining operations that would operate in compliance with current laws, standards, and best management practices in waterways designated as impaired. Due to the vintage of these abandoned mines, many well over 50-100 years old, there is no Financially Responsible Party and the owner of the property is not the party that caused the mine or drainage. The presence of impaired waters increases costs for providing potable drinking water in headwaters communities, and causes loss of economic benefits from reduced agricultural activities, loss of economic benefits from appropriate modern mining operations not being able to get discharge permits, and loss of economic benefits from reduced or lack of fisheries that allow for recreational opportunities.

Some of these abandoned mine sites may have been identified as a priority for cleanup under the Environmental Protection Agency (EPA) Superfund program, however this program for many reasons cannot quickly address the issue that local Good Samaritans know intimately. For example, one study suggests that 70% of acid drainage and metal loading in the Uncompahgre River comes from just 3 abandoned mine portals. Even if there is natural acid drainage from the inherent geology of this San Juan Mountains area, improving the water quality through clean up of these abandoned mine portals could open up important economic opportunities for new small and medium scale hard

rock mines, more productive agricultural operations, improved outdoor recreation, and less expense of procuring potable municipal water for residents downstream. All of these outcomes will contribute to diversification of the economy, provide new quality jobs, and lessen the burden on taxpayers. Local Good Samaritans exist and are ready to clean up these abandoned mines when threat of liability is removed.

Counties need resolution of this issue immediately, and it may be possible for the issue to be resolved administratively rather than legislatively. No matter how providing bona fide "Good Samaritans" protection from liabilities is achieved, this needs to be accomplished immediately because it will allow impacted/impaired areas to realize important economic benefits in areas having limited opportunities.

**FISCAL/RURAL/URBAN IMPACT:** This resolution does not encourage any new program or requirement for mandating any county expenditure. When acid drainage from abandoned mines is mitigated there will be positive economic benefits through opportunities for enhance agricultural operations, enhanced or new fisheries, increased outdoor recreation and tourism, opportunities for permitting new mines, and decreased cost of acquiring potable water for municipal use.

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