TESTIMONY OF
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Mr. Chairman and Members of the Committee, I am Benjamin H. Grumbles, Assistant Administrator for Water at the United States Environmental Protection Agency (EPA). Thank you for the opportunity to discuss EPA's efforts to protect and restore water resources which may be affected by mining activities. EPA is committed to using all appropriate regulatory tools and collaborative partnerships to prevent or reduce pollution at mining sites and restore impaired watersheds. We're using our current authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) to reduce risks and developing new tools and approaches, including our Good Samaritan Initiative, to clean up abandoned hardrock mines. We are also working closely with NRC on uranium mining issues.

The Abandoned Mine Problem

Inactive or abandoned mine sites can pose serious public safety and environmental hazards. The good news is that there are significant resources available through voluntary efforts to remediate these sites and improve

environmental health and safety. 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 and enhance abandoned mine sites throughout the United States.

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.

The Center of the American West at the University of Colorado, Boulder developed and published a report entitled, “Cleaning Up Abandoned Hardrock Mines in the West – Prospecting for a Better Future,” for which EPA provided financial assistance. However, the report does not represent formal EPA policy. The report details the history of the nation’s mining industry, the environmental legacy that remains, and describes challenges and management options – at the Federal, State and local level – in reducing the effects of inactive and 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 and cleanup of these mines no longer exist. However, over the years, an increasing number of Good Samaritans, who are not responsible for the pollution, have expressed interest in cleaning up abandoned mines. Through their efforts, we can help restore watersheds and improve water quality.

Liability

The threat of liability, whether under the Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), can be a real impediment to voluntary remediation. A private party cleaning up a release of hazardous substances might become liable as either an operator of the site, or as an arranger for disposal of the hazardous substances. Under the Clean Water Act, 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. The potential assignment of liability occurs even though the party performing the cleanup did not create the conditions causing or contributing to the degradation. Removing this liability threat will encourage more Good Samaritans to restore watersheds impacted by acid mine drainage.

The Clean Water Act requires permit holders to comply with their permits so discharges do not violate water quality standards. While this concept has been extremely effective for protecting and restoring our Nation's waters, it inhibits the type of work Good Samaritans would undertake. Partial cleanups by Good Samaritans will result in meaningful environmental improvements and will accelerate achieving water quality 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 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. Another concern for potential Good Samaritans is their potential liability for any remaining discharges at the abandoned mine site. Under current law, it may not be possible for a Good Samaritan to go onto a site, do a cleanup to improve the quality of a discharge, and maintain the site after completing what they said they were going to do without long term liability. A statutory change to the Clean Water Act is appropriate to provide this protection and to be realistic and fair to a volunteer agreeing to improve water quality. 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 our support for Good Samaritan cleanups is not about lowering environmental standards or letting polluters off the hook. Good Samaritans should be held to a realistic standard that results in environmental improvements and to be held accountable while they have a permit. And those responsible for the pollution, if still in existence, will remain accountable, consistent with the Agency's "polluter pays" policy.

Good Samaritan Tools

In June 2007, EPA Administrator Steve Johnson released administrative tools that provide strong protections for Good Samaritans under CERCLA. The Agency developed a model Good Samaritan Agreement and comfort/status letter that 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. We are also working closely with our Federal land management agencies and State partners to encourage, where appropriate, greater use of voluntary cleanup programs for abandoned mine remediation. In addition, we developed guidance that will help Good Samaritans understand our approach to these cleanups. Our administrative tools do much under CERCLA to remove roadblocks, but we can only go so far administratively.

Legislative Efforts

In addition to the administrative tools, the Administration and EPA proposed the Good Samaritan Clean Watershed Act in the last Congress to

comprehensively reduce the Good Samaritan liability issues. That legislation, as you probably know, would modify both CERCLA and the Clean Water Act. With the release of our administrative tools, and our desire to accelerate the pace of environmental improvement, EPA continues to work with a broad range of stakeholders including the Western Governors' Association, and others, to develop a targeted bipartisan legislative proposal for the Clean Water Act, which remains the main obstacle to Good Samaritan cleanups. In fact, there are many cleanups in the State of Colorado that remain on hold and unfinished, not because of CERCLA liability concerns, but because of Clean Water Act liability concerns.

We applaud the bipartisan legislative efforts in both houses of Congress to correct the issue, and we look forward to working with the appropriate Congressional committees on legislation. In the interim, and until such time as Good Samaritan legislation is enacted, EPA will continue to encourage and facilitate cleanup of abandon mines through use of its administrative tools and authorities.

Good Samaritan Activities

The first project under the Agency's Good Samaritan Initiative is the abandoned mine in Utah's American Fork Canyon. EPA worked with Trout Unlimited (TU) and a private landowner who had not caused the pollution at the site to help restore a watershed that has been impacted for well over a century,

restoring 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 Trout Unlimited 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 Trout Unlimited project, and is putting those lessons to good use. This restoration effort exemplifies how the President's vision of cooperative conservation, which emphasizes collaboration over confrontation, can accelerate environmental protection.

Mine scarred lands are a particular concern of the EPA Brownfields Program and they were explicitly highlighted in the Brownfields Law passed in 2002. The Brownfields Program has coordinated a multi-agency collaborative initiative to help communities clean up and reuse mine-scarred lands. The federal partners are implementing six community pilots in Virginia, Pennsylvania, West Virginia, Colorado, and Nevada. The pilot communities received targeted federal technical and financial support initially to help develop action plans and then to create local assistance packages leading to revitalization.

We hope the Good Samaritan initiative will be a springboard for future successes, such as those achieved through the Brownfields program. But unlike the situation with Brownfields, Good Samaritans at abandoned mine sites are not looking to purchase the property or receive monetary awards for their efforts --

they simply want to engage in voluntary stewardship activities that benefit the environment.

The bottom line is that this type of innovative partnership agreement -- coupled with other assistance -- can help dramatically in revitalizing thousands of water bodies harmed by acid mine runoff.

A comprehensive solution to the problem associated with abandoned mine remediation is long overdue. EPA is actively working with Congress and our partners at the State and local levels to create a long term solution to encourage and expedite Good Samaritan cleanups. EPA will continue to provide leadership through the Good Samaritan Initiative and to work with other Federal land management agencies, States and Congress to pass legislation for the Clean Water Act that promotes and encourages environmental restoration of abandon mine sites across the country.

In-Situ Recovery of Uranium

There is growing interest in developing uranium mining sites in several states due to significant increases in the price of uranium. Uranium is mined through conventional open pit and underground mining practices. However, most of the uranium extracted in the U.S. is now produced by in-situ leaching, or ISL. ISL uses injection wells to introduce alkaline fluids into underground formations to dissolve uranium into solution. Production wells subsequently bring

the uranium-bearing fluids to the surface, where they are processed into "yellowcake" for use by the nuclear industry.

EPA shares authority with the Nuclear Regulatory Commission (NRC) and with the States in overseeing practices at ISL facilities. NRC regulates all ISL facility operations, including the injection of fluids, using environmental, radiation, and ground water protection standards developed by EPA in accordance with the Uranium Mill Tailings Radiation Control Act (UMTRCA). Operators of injection wells used at ISL facilities also must apply for and receive a Class III well permit under the authority of the Safe Drinking Water Act's Underground Injection Control (UIC) program requirements. Permits for Class III solution mining wells are issued by the state UIC agency or EPA, in those states that have not taken primary enforcement responsibility for the UIC program. State UIC programs may have requirements that are more stringent than EPA requirements.

At the end of 2007 there were five ISL facilities licensed and operating in the U.S. – in Wyoming, Nebraska and Texas. One facility in Wyoming is licensed and permitted, but not operating. The NRC has licensed another one in New Mexico, but it is not operating because of pending Federal court litigation regarding Safe Drinking Water Act permits for the facility. The NRC has received four new license applications and expects several additional applications in the next two years. Additional license applications have been received, or are likely to be received in the NRC Agreement States of Texas and Colorado. Any new

facilities will be licensed by NRC or its Agreement States, and must apply for and receive permits from their state UIC program or EPA.

We are working closely with the NRC as they develop revisions to their existing ground water regulations to ensure that they incorporate EPA regulatory requirements developed under UMTRCA and are consistent with EPA regulations for Class III injection wells. EPA or the state UIC program will maintain responsibility for permitting ISL injection wells. Permits consider the siting of wells, construction standards, operational practices, monitoring and reporting, closure, financial responsibility, and cleanup. The NRC regulations and related guidance require operators to take action to prevent off-site excursions of uranium production fluids into ground water aquifers during operations, and to restore ground water after operations are completed.

EPA understands that some communities are very concerned about the potential development of new uranium ISL mining operations. States that may need to regulate these new mining sites are also very engaged in this issue, as evidenced by the national panel of presentations and discussions of in-situ extraction of uranium at the recent Ground Water Protection Council meeting in New Orleans. We will continue to work with our federal partners and state co-regulators to ensure that ISL practices do not endanger underground sources of drinking water.

CERCLA

The Superfund program was established under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), which Congress passed in December 1980 to respond to concerns over Love Canal and other toxic waste sites. The Superfund program protects human health and the environment by performing or requiring cleanup of hazardous waste sites and short-term actions to mitigate immediate threats to human health. Some of the Nation's most contaminated sites are listed on EPA's Superfund National Priorities List (NPL). A small percentage of the 1,569 sites listed on the NPL are related to mining. Through FY 2007, there were 84 sites on the NPL that had been associated with mining or mine-related activities. The vast majority of abandoned mining sites in the U.S. will not be addressed through the Superfund program but through other federal, state, local, or private sector mechanisms.

Uranium Mine Legacy on Navajo Nation

Additionally, EPA has provided assistance to the Navajo Nation to address uranium abandoned mine land contamination, principally through the Agency’s Region 9 Office. Working together with the Nuclear Regulatory Commission, Department of Energy, Indian Health Service, and Bureau of Indian Affairs, EPA has committed to provide continued support to the Navajo Nation to address the legacy of uranium mine wastes and uranium contaminated buildings and water sources. This support is embodied in a draft five-year plan from the five federal

agencies that reviews public health and environmental impacts of uranium contamination in the Navajo Nation. We will continue to work closely with the Navajo Nation and other federal, state and local partners to manage the environmental effects of abandoned uranium mines on Navajo Nation.

Conclusion

Thank you, Mr. Chairman for giving me the opportunity to testify today. EPA understands the importance of mining to our nation's economy and global competitiveness, and is committed to using available regulatory tools and partnerships to protect and restore the environment. We look forward to working with you and your colleagues on mining-related environmental issues and making this the year that Good Samaritan legislation is enacted into law.