



**Protecting the Good Samaritan:
The perfect standing in the way of the good?**

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History of proposed Federal Environmental Good Samaritan legislation

- **The story starts out West**
 - **The Problem**
 - » **Who's to blame?**
 - » **Who wants to help?**



Who's Liability Is It Anyway?

○Eg. **Committee to Save Mokelumne River v. East Bay Utility District**

○Citizen group sued state entities that were discharging pollutants from an abandoned mine facility without NPDES permit.



Past Efforts to Get Support For Good Sam.

- US Senators
- Western Governors' Association
- Watershed Groups

So, What Happened to Good Sam?



Why Do We Need It Here And Now?

- The Keeley Decision in 2009
- WV Highlands Conservancy and WV Rivers Coalition V. Randy Huffman, Secretary WV DEP.
- Dealt with Bond Forfeiture sites
 - WVDEP argued:
 - Sovereign Immunity
 - Not point sources (EPA tacitly “approved” treating these sites like AMD sites like in PA however, EPA has said “no determination”)
 - WV is not a “person” (owner/operator..is operator’s duty to get permit)

However, the Keeley Decision created other concerns...

- Using the word “Abandoned” interchangeably
- Re-stating the language of the CWA

The Appeals Court

- . The 4th Circuit Court of Appeals ruling states in part: *“The trial court’s ruling was correct. The text of the CWA (Clean Water Act), as well as the corresponding regulations issued by the Environmental Protection Agency, confirm that the permit requirements apply to anyone who discharges pollutants into the waters of the United States. Under the CWA, it does not matter that a mining company may have created the conditions that call for reclamation. What matters is that an entity, private or public, is currently discharging pollutants into the waters of the United States. In fact, the statute contains no exceptions for state agencies or watershed organizations engaging in reclamation efforts; to the contrary, it explicitly includes them within its scope.”*

- Continuing: *“In furtherance of those goals, the CWA bans, among other things, the discharge of any pollutant by any person, 33 U.S.C. § 1311(a). On its face, the ban is sweeping in scope: the Act defines “person” to include not just private individuals and companies, but also states, municipalities and organizations, see 33 U.S.C. § 1362(5), and covers “any addition of any pollutant to navigable waters from any point source,” see 33 U.S.C. § 1362(12)(A).”*
- The word “any” could very well include Good Samaritan organizations, including watershed groups. Although some states have Good Samaritan legislation in place, Judge Keeley and the 4th Circuit Court of Appeals ruled that state legislation cannot grant exemptions to the CWA – only Congress can do that.

So What's Standing In The Way?

- Legislative hurdles
- Communication
- Misconceptions
- Ignorance
- The Pursuit of “Perfection”



Possible Solutions to Protect The Good Samaritan



**EPA Solution
SMCRA amendment
CWA amendment
Some type of General
Permit**

A photograph of a natural stream flowing through a rocky, wooded area. The water is a striking, bright orange-red color, likely due to mineral content or algae. The stream flows from the top center towards the bottom right, with several large, light-colored rocks in the foreground. The surrounding vegetation is green and dense. The text "Can we really Git R Done?" is overlaid in the center of the image.

Can we really Git R Done?

Recent Developments

- Last week, the settlement was announced regarding the Highlands case.
- Proposed settlement filed by WV Highlands Cons./Rivers Coalition/Sierra Club.
- WV DEP is assembling a list of special reclamation sites. They will have to come up with permits w/ water pollution limits to meet water quality standards for 171 sites.

STAY TUNED

Questions ?

