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December 11, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Administrator McCarthy:

The Local Government Advisory Committee (LGAC) is writing to offer our initial findings and recommendations regarding the threats and potential harm of legacy abandoned mines evidenced by the tragic Gold King mine toxic spill in the Animas and San Juan Rivers. The recent Animas River spill received national attention when an estimated 3 million gallons of mine waste spilled into the Animas River as a result of an EPA contractor's clean-up work on the Gold King mine.

The Gold King mine, like so many abandoned and orphaned mines, poses serious water quality and public health concerns for our communities nationwide. Communities need the assistance of the EPA and other federal agencies to hold parties responsible, prevent further environmental degradation, address liability issues, and protect public health and economic impacts.

As your local government advisors, we encourage the EPA to enter a robust solution-led intergovernmental dialogue with states, tribes and local officials to address broad national concerns about abandoned mines and to explore solutions to address environmental and public health concerns at all levels. The LGAC believes that such a dialogue would help to identify and properly address the environmental and public health threats in order to avoid catastrophic events like the Animas River spill in the future.

#### ***Background***

On August 5, 2015 an EPA contractor was attempting clean-up of the abandoned Gold King mine in Colorado when a waste pond failed, releasing an estimated 3 million gallons of toxic mine waste into the Animas and San Juan Rivers. This spill contaminated an area spanning

three states, impacting tribes and communities that depend on the river for drinking water, agricultural uses and their economic livelihood.

### **LGAC Findings and Recommendations**

The LGAC's Cleaning Up Our Communities (CUOC) Workgroup began a discussion to investigate issues brought to the forefront by the toxic mine waste spill in the Animas River. These are the LGAC findings and recommendations.

#### ***Findings***

In a September 28<sup>th</sup> briefing, the CUOC Workgroup heard from Mayor Dean Brookie, Durango, Colorado, on his on- the- ground perspective on the status of the clean-up and to hear what further legal, policy and resource issues might need to be addressed. Mayor Brookie's presentation highlighted many concerns which still exist for his community, and for the estimated 500,000 abandoned mines which continue to pose serious threats elsewhere.

Although the water quality of the Animas and San Juan Rivers is back to pre-spill conditions, the water quality remains poor. Still present in this water and stream bed are at least twenty-four (24) types of heavy metals which have and will continue to pose a level of threat to water quality.<sup>1</sup> We understand that the EPA is actively addressing additional issues, such as long-term clean-up and notification protocols. It is also our understanding that the EPA contractor has installed a treatment facility at the Gold King Mine and completed the construction and started operation of a 1,200-gallon-per-minute (GPM) interim water treatment facility at the Gold King Mine to treat contaminated water before it gets to the river. This treatment facility will run continuously up to temperatures minus 20 degrees.<sup>2</sup>

Leaky and toxic mines did not begin with the Animas River spill, rather, this recent spill highlights centuries old problems in areas with historic mining economies, an issue that is particularly endemic in Western regions. Virtually every county and city co-located with a history of mining and extraction has water quality and other environmental concerns. The toxic spill in the Animas River underscores these issues for public concern and highlights these concerns for immediate national attention. From the LGAC's inquiry, we have learned that efforts are underway within the EPA to address the Animas River clean-up in the short-term, and that stabilization, as well as actions for long-term recovery will continue.

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<sup>1</sup>Testimony of Mayor Dean Brookie, before the U.S. House of Representatives, Committee on Science, Space & Technology, September 9, 2015 <http://docs.house.gov/meetings/SY/SY00/20150909/103930/HHRG-114-SY00-Wstate-BrookieD-20150909.pdf>

<sup>2</sup> Water World, Alexco completes water treatment plant at Gold King Mine in Colorado <http://www.waterworld.com/articles/2015/11/alexco-completes-construction-of-water-treatment-plant-at-gold-king-mine-in-colorado.html>

The LGAC writes now, primarily to focus on the mining impact legacy issues facing so many communities nationwide. There are more than 500,000 abandoned mines in need of clean up, but are currently frequently left for state, tribal and local governments to address, all the while possibly posing threats and concerns in all of our communities, nationwide. Of critical concern are the serious threats to human health due to increased exposure to toxic metals, dust, injuries and accidents. Of equal concern are the discharges into polluted waters of these abandoned mines and the risk that these may lead to significant uptake of contaminants in fish and contamination of agriculture irrigation systems and associated crops which humans consume. Abandoned uranium mines even pose the added threat of radiation exposure to the list of health concerns.<sup>3</sup>

LGAC Member and Secretary of New Mexico Secretary of Agriculture Jeff Witte, was directly impacted by the Animas spill. His state had many agricultural based communities directly impacted by not only the environmental impacts of the Animas spill, but also to by the economic impacts to agricultural production and to livestock. However, he and his Department, went to work immediately on response to the spill, in cooperation with the Extension Service, and the Experiment Station to establish an effective model to ensure the disaster response to the agricultural communities was "*quick, appropriate and well-informed.*" They have also been working with agricultural producers who rely on the rivers' water for crops and livestock to provide immediate assistance to test the soil for contaminants; to help ensure clean water sources are available for livestock and crops; and helping to set up community forums to disseminate information.<sup>4</sup> The LGAC believes this model of engagement could be of assistance to other agricultural communities faced with similar disasters to get information quickly in order to avoid threats and in post-disaster to recover and to get back to normal as soon as possible.

Abandoned mines, like the Gold King mine, pose serious environmental and public health concerns for many communities. The extent of the impacts often remains hidden as well as the environmental and public health threats that abandoned mine leaks pose to communities everywhere. What is apparent is that in order to protect our communities from the threat of future tragic toxic contamination, federal, state, tribal and local governments will need to work together in close partnership with private industry to address the complex and myriad legal, policy and environmental issues. Of further concern are the many rural, disadvantaged, tribal and minority communities in harm's way, to which the environmental concerns pose a greater risk, and who lack the adequate resources to address these issues.

The LGAC offers our initial finding that the toxic spill into the Animas and San Juan Rivers is being addressed and the impacts still pose environmental concerns for communities in the impact area.

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<sup>3</sup> Abandoned Mine Lands, "Extent of problem, Health Concerns, Environmental Degradation"  
<http://www.abandonedmines.gov/ep.html>

<sup>4</sup> Albuquerque Journal, "NM Agencies Responded Quickly to Spill"  
<http://www.abqjournal.com/680037/opinion/nm-agencies-responded-quickly-to-spill.html>

The LGAC further finds that legacy abandoned mines continue to pose significant threats to communities' water quality. Public health is also a concern nationwide, but has largely gone unaddressed because of resource restraints and liability issues.

The U.S. Congress is reviewing several legislative proposals to address these obstacles, including possible statutory changes to address clean-up, liability, Good Samaritan issues, and environmental threats. The LGAC believes that in order to make progress, intergovernmental cooperation is needed, and Good Samaritan principles must be prerequisite.

### **Recommendations**

**Recommendation:** The LGAC recommends that the EPA continue to vigorously pursue broad intergovernmental dialogue aimed toward identifying partnerships and regaining trust among the tribal, local and state governmental agencies with the EPA to address the issue of these legacy abandoned mines and explore cooperative local-based solutions to effectively address clean up and avoid future harm. For example, the New Mexico Association of Conservation Districts (NMACD) has a multi-year agreement with the Bureau of Land Management (BLM) to clean up mine sites on BLM managed lands. The NMACD is quite nimble and efficient in carrying out the administrative needs in finding contractors to clean up the smaller mine sites on BLM properties, while meeting the deliverables dictated by federal requirements.

**Recommendation:** The LGAC furthermore recommends that the EPA Regions would be a good convener for this dialogue to explore with state, local and tribal governments further definition of the issues of concern and to explore local based solutions to address these environmental and public health concerns. Also, the LGAC recommends that the EPA work with the Department of Agriculture, the Extension Service and other agricultural stakeholders to look at the impacts to water supplies and eventually the food chain.

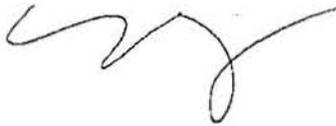
**Recommendation:** The LGAC furthermore recommends that the EPA conduct a thorough 'After Action Report' to their response which includes EPA Regions 6, 8 and 9, and the local, state and tribal governmental emergency response teams to help provide an analysis of the planning, prevention, response, and recovery regarding the Gold King Mine toxic spill and create an implementation plan to address areas identified.

**In Summary,** The LGAC offers our assistance as your local advisors to help with such a dialogue so that we can avoid future tragic spills and to promote clean ups where there are impacts so that we can have a legacy of clean water that is crucial for all of our communities. We also recognize that the Animas River spill, though tragic, may well contain guideposts for all levels of government that we can learn from, and be informed of, so as to avoid such accidents and to seek constructive solutions in the future. We on the LGAC offer our continued support to fully provide you with our insight on how to best resolve these intergovernmental issues so that solutions can be locally led with the best tools, resources and effective partnerships in place to make that 'visible difference' in our communities.

Sincerely,

*Robert A. Dixon*

Mayor Bob Dixon  
Chairman

A handwritten signature in black ink, appearing to read "Susan Hann". The signature is fluid and cursive, with a large loop at the end.

Ms. Susan Hann  
Chairwoman, Protecting America's  
Waters Workgroup

*Jill C. Duson*

Councilor Jill Duson  
Chairwoman, Cleaning Up Our  
Communities Workgroup (CUOC)

