



## Policy Resolution 2024-08

### Cleaning Up Abandoned Hardrock Mines in the West

#### **A. BACKGROUND**

The West has a proud legacy of providing critical and essential minerals for our nation's economy and today's modern mines operate in a highly regulated and responsible manner that protects their people, communities, and environment. Unfortunately, historic abandoned mines that operated before modern environmental laws and regulations were promulgated continue to pose environmental risk. Cleanup of these historic abandoned mines is hampered by lack of funding, concerns about liability, and complex land and mineral ownership. In recognition of the numerous economic, environmental, and social benefits that may result from abandoned hardrock mine remediation, states, municipalities, federal agencies, volunteer citizen groups, the mining industry, and private parties have engaged in or are interested in voluntarily cleaning up abandoned mines. Parties that voluntarily engage in abandoned mine cleanup but have no liability or responsibility requiring them to do so are referred to in this resolution as Good Samaritans.

Currently, Good Samaritans have potential liability for their cleanup under Sections 301 and 402 of the Clean Water Act (CWA), because they can inherit liability for any discharges from an abandoned mine; they may face additional liability for voluntary cleanup activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). Good Samaritans are exposed to these liability risks, despite not having owned or operated the mine, voluntarily bearing the costs of cleanup, and providing numerous environmental benefits through successful remediation. In western states with established abandoned hardrock mine lands programs, abandoned hardrock mine cleanup projects on public lands are led by state agency project managers. Allowing deferral of project leads to states on pilot programs will facilitate improved cleanup response times due to their expertise and knowledge of the area.

On March 5, 2020, the U.S. Government Accountability Office (GAO) published its report, *Abandoned Hardrock Mines: Information on Number of Mines, Expenditures, and Factors that Limit Efforts to Address Hazards* (GAO-20-238). Bureau of Land Management officials estimated that with the agency's current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database.

#### **B. GOVERNORS' POLICY STATEMENT**

1. Western Governors call on Congress to legally protect Good Samaritans who clean up abandoned mines, including local and state government agencies, from becoming legally responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.
2. Western Governors call on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA and RCRA liabilities for Good

Samaritans. The federal government should also develop remedies for long term liabilities associated with remining, which deter those best equipped with technology and expertise (*i.e.*, state and local governments, non-governmental organizations, the mining industry) from improving conditions at abandoned mines.

3. As the costs to clean up abandoned hardrock mines are significant, Western Governors support efforts by Congress and the Administration that would facilitate cleanups by Good Samaritans. To this end, the requirements for Good Samaritan project approvals and reviews should not deter cleanups, while still ensuring there are significant measurable environmental gains from the project. Governors would also support legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.
4. Many states have agencies with robust programs that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. Due to existing expertise, states are best suited to determine which entities are eligible for Good Samaritan status and to review and determine the adequacy of Good Samaritan reclamation plans. The execution of the states' management of permit applications and determination of eligibility shall be consistent across the nation with the passage of federal legislation that facilitates Good Samaritan remediation of abandoned hardrock mines.
5. Federal land managers and state officials that responded to the March 5, 2020, GAO Report consistently expressed that their backlog of work on these mines far exceeds their current staff and budget levels. Western Governors support full appropriations of the Abandoned Hardrock Mine Reclamation Program created under Section 40704 of the Infrastructure Investment and Jobs Act, to address the backlog of abandoned hardrock mine inventory through both federal and state programs.
6. Western Governors support legislation to clarify and, where possible, minimize liabilities associated with developing reclaimed abandoned hardrock mine sites with solar arrays and other reuse projects with beneficial economic, environmental, and social effects.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

*This resolution will expire in June 2027. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.*