



## Policy Resolution 2018-11

### Cleaning Up Abandoned Mines in the West

#### **A. BACKGROUND**

1. Hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper. As part of this past, the West contains historically mined and abandoned hardrock mines, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the cleanup and reclamation.
2. The cleanup of abandoned hardrock mines is hampered by two issues – lack of funding and concerns about liability. These issues are compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site.
3. There are numerous economic, environmental, and social benefits from remediating lands and waters impaired by abandoned hardrock mines. In recognition of these benefits, states, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility requiring them to cleanup abandoned mines have engaged in or are interested in voluntarily cleaning up abandoned mines; these parties are referred to in this resolution as Good Samaritans. However, questions of liability stemming from this voluntary cleanup have stymied many of these efforts.
4. Good Samaritans currently have potential liability for their voluntary cleanup under Sections 301 and 402 of the Clean Water Act (CWA), because they can inherit liability for any discharges from an abandoned mine. In addition, Good Samaritans have potential liability for their voluntary cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).
5. Good Samaritans are exposed to these liability risks despite the fact that: they did not previously operate or own the mine; they would voluntarily bear the costs of the cleanup; and they could provide numerous benefits if they were able to remediate the abandoned mine, such as improving water quality, facilitating beneficial land use, and securing the site.
6. Liability concerns also prevent mining companies from re-mining or voluntarily cleaning up abandoned mines. While remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for voluntary efforts.

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

1. Western Governors call on Congress to legally protect Good Samaritans that cleanup 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 liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental, 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 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 that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate impacted waters, and implement abandoned mine programs. These states are best suited to determine what entities are eligible for Good Samaritan status and review and determine the adequacy of Good Samaritan reclamation plans.

**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.

*Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult [www.westgov.org/policies](http://www.westgov.org/policies) for the most current copy of a resolution and a list of all current WGA policy resolutions.*