August 25, 2022

Steven Feldgus
Deputy Assistant Secretary, Land and Minerals Management
US Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Deputy Assistant Secretary Feldgus:

In response to the Department of the Interior's March 31, 2022, Request for Information To Inform Interagency Working Group on Mining Regulations, Laws, and Permitting (87 FR 18811), attached please find the following Western Governors' Association (WGA) policy resolutions:

- WGA Policy Resolution 2022-08, National Minerals Policy;
- WGA Policy Resolution 2020-02, States' Share of Royalties and Leasing Revenues from Federal Lands and Minerals;
- WGA Policy Resolution 2020-04, Financial Assurance Regulation; and
- WGA Policy Resolution 2021-09, Cleaning Up Abandoned Hardrock Mines in the West.

These resolutions provide Western Governors' collective policy on mineral development, mine cleanup and reclamation, royalties, and other mining related topics under consideration by the working group.

Please contact me if you have any questions or require further information. In the meantime, with warm regards and best wishes, I am

Respectfully,

James D. Ogsbury
Executive Director

Attachments (4)

Policy Resolution 2022-08

National Minerals Policy

A. BACKGROUND

1. Federal lands account for as much as 86 percent of the land area in certain western states. These same states account for 75 percent of our nation's metals production. Few countries are as blessed with the abundance of minerals and metals as is the United States.

2. The Mining and Minerals Policy Act of 1970 formally recognized the importance of mining and domestic minerals production as a policy of the United States, including "the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries," "the orderly and economic development of mineral resources … to help assure satisfaction of industrial, security and environmental needs," "mining, mineral and metallurgical research," "… including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable resources; the study and development of methods for the disposal, control and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen adverse impacts of mineral extraction."

3. Access to domestic minerals is increasingly important to decrease our reliance on foreign sources. Twenty-five years ago, the United States was dependent on foreign sources for 45 nonfuel mineral materials. The U.S. imported 100 percent of the Nation's requirements for 8 of these and imported more than 50 percent of the Nation's needs for another 19. By 2014, U.S. import dependence for nonfuel mineral materials had risen significantly from 45 to 65 commodities. The United States imported 100 percent of the Nation's requirements for 19 of these, imported more than 50 percent of the Nation's needs for another 24.

4. A major factor contributing to the U.S. reliance on foreign sources of minerals is a duplicative and inefficient mine permitting system that discourages development of domestic resources. While processes have improved, it can take seven to 10 years in the United States to navigate this cumbersome federal process to bring a mine into production. The same process takes approximately two years in countries that have comparable environmental standards, such as Canada and Australia. Targeted reforms to the mine permitting system are necessary to ensure a domestic supply of minerals which is sufficient to meet the rapidly growing demand.

5. Ensuring timely access to domestic minerals will strengthen our economy and keep us competitive globally as demand for minerals continues to grow, especially for manufacturing and construction. Our antiquated and duplicative permitting process discourages investment and jeopardizes the growth of downstream industries, related jobs and technological innovation that all depend on a secure and reliable mineral supply chain. Permitting delays also impede the United States' ability to meet growing demand for consumer electronics and energy technologies – both of which require minerals and metals in their manufacture.

6. Transitioning to a renewable energy economy will require a 400 to 600 percent increase in the supply of critical minerals like lithium, graphite, cobalt and nickel, either from recycled sources or new mineral development. Expanding the new or recycled domestic supply and processing capacity for critical minerals is essential to increasing the supply of renewable energy technologies such as electric vehicle batteries, solar panels, and wind turbines. Critical minerals also have non-energy applications, and increasing demand for critical minerals in the energy sector has the potential to create scarcity in the supply chain for other sectors such as consumer electronics, causing price inflation.

7. As innovations continue to occur in defense and energy industries, it is imperative that we limit our reliance on foreign markets for the rare earth minerals that support a wide range of applications throughout these important sectors. Current opportunities exist to establish domestic end-to-end rare earth material mines, and priority should be given to identifying policies that minimize foreign dependence on rare earth minerals.

8. The Mining Law has provided the framework for developing hardrock minerals on the public lands. It has been supplemented by a large body of federal, state, tribal and local environmental and reclamation laws and regulations (including regulations promulgated by the federal land management agencies) to assure protection of the environment, wildlife and cultural resources during mineral exploration and development and to ensure reclamation of lands after active mining ceases. Supplements added to the existing framework for developing hardrock minerals on public lands should reflect, and respect, traditional understanding of jurisdiction.

9. The National Academy of Sciences' National Research Council, after a comprehensive review of these laws and regulations at the direction of the Congress, concluded that existing laws and regulations are "complicated but generally effective." It also identified "specific issues or 'gaps' in existing..." regulations intended to protect the environment."

10. Hardrock mining operations on both public and private lands in the western states are subject to federal environmental laws under both the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers. In most states, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act are administered by state environmental agencies with oversight by EPA. Hardrock mining operations are also subject to regulatory programs for the protection of plants and wildlife, including the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle Protection Act.

11. Furthermore, the modern hardrock mining industry is extensively regulated by the federal government on U.S. Bureau of Land Management- and U.S. Forest Service-administered lands. These regulations include review of the mining plan of operations, comprehensive permit, design, operations, closure, reclamation requirements, corrective action and financial assurance requirements, to ensure that the mining operations will not result in unnecessary or undue degradation of public lands.

12. The western states also extensively regulate hardrock mining operations on both private and public lands (state and federal), and uniformly impose permit and stringent design and operating standards, as well as financial assurances to ensure that hardrock mining operations are conducted in a manner that is protective of human health and the environment, and that, at closure, the mined lands are returned to a safe, stable condition for productive post-mining use.

13. Under the federal Mining Law, no royalties are owed to the federal or state governments for hardrock minerals extracted from federal public lands. However, such mining operations, which are most often located in rural areas lacking economic opportunities, can result in significant high-wage employment, royalties from private and state lands, increased state and local tax revenues and development of infrastructure necessary to support communities.

B. GOVERNORS' POLICY STATEMENT

1. Now is the time to build on the 1970 Mining and Minerals Policy Act with legislation and policies that will unlock our mineral potential to ensure access to the metals that are critical to U.S. economic and national security – providing vital base materials for electronics, telecommunications, satellites, aircraft, manufacturing and alternative energy technologies (particularly wind, solar, and electric vehicle batteries).

2. Western Governors recognize that the minerals mining industry is an important component to both local and national economies. Reliable supplies of minerals and metals play a critical role in meeting our economic and national security needs.

3. WGA commends efforts by the United States Geological Survey and state geological surveys to identify potential, critical minerals deposits for alternative energy technologies and other consumer products vital to modern society.

4. Congress, in consultation with the states, should develop a National Minerals Policy that truly enables mineral exploration and development in a manner that balances the nation's industrial and security needs with adequate protection of natural resources and the environment. Without reducing environmental or other protections afforded by current laws and regulations, any policy must address the length of the mine permitting process to ensure we can develop and provide the domestic resources that are critical to our national and economic security. Any policy should also take into account the potential impacts (including potential environmental effects) of mining operations and should maintain policies and procedures in place to mitigate any impacts.

5. A National Minerals Policy should address permitting delays, patenting, maintenance fees, an equitable government revenue mechanism, and the development of a clean-up fund and program for reclaiming abandoned hard rock mines. Relevant stakeholders, including the mining industry, should continue to work with Congress to determine the elements of a royalty system that is workable and fair.

6. New financial assurance requirements imposed upon the hardrock mining industry under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b) would duplicate or supplant existing and proven state financial assurance regulations in this area. This is of particular concern to the western states, because CERCLA is a non-delegable federal program that provides no opportunity for implementation through state environmental agencies. The western states have developed deep experience in mine permitting, regulation, and closure. Federal preemption of state bonding programs will threaten these effective state programs.

7. The federal government should take an active role, working with western states, in the development of national minerals policies that recognizes the importance of a domestic

supply of minerals for our country while also protecting water resources which are particularly sensitive to the impacts of mining.

8. Western Governors encourage the Council on Environmental Quality to pursue improvements to National Environmental Policy Act (NEPA) regulations and policies that will provide certainty and predictability in the NEPA process. Protracted completion of NEPA reviews and excessive NEPA litigation cause delays and impose unreasonable costs on a wide range of projects on federal lands. Western Governors support timely NEPA reviews and policies that provide clear guidance as to the scope of impacts of any major federal action. Reforming NEPA procedures is an important step toward securing a reliable, domestic source of critical minerals. Such NEPA reforms should also ensure that western states with significant amounts of public land are not put at a competitive disadvantage relative to other states.

9. The United States holds approximately 55 million surface acres and 59 million acres of subsurface mineral estate in trust for tribal nations, and federal government has a responsibility to protect, administer, and account for the natural resources that it holds in trust on behalf of tribes. Tribes that are seeking to make use of trust resources deserve to be able to do so without diminution of their value caused by the federal government's actions. Governors support meaningful government-to-government consultation with Tribal sovereigns intending to make use of trust resources, and support efforts to avoid delays in approving rights-of-way applications for linear infrastructure to support mine operations, or other delays affecting mineral development that may constitute a failure to uphold this trust responsibility and affect tribes' ability to benefit from their mineral resources.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

This resolution will expire in June 2025. 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.

Policy Resolution 2020-02

States' Share of Royalties and Leasing Revenues from Federal Lands and Minerals

A. BACKGROUND

1. The settlement of the western United States was very different from the earlier settlement of the Eastern half of the country. As a result, land ownership in the West consists of a patchwork of federal, state, tribal and privately owned and managed lands and minerals. Over 591 million acres of federally-owned land and over 659 million acres of federally-owned mineral estate are within the boundaries of the western states. Many of these federal lands in western states have significant value.

2. The federal government sells or leases a variety of resources (minerals, gravel, oil and gas, coal, geothermal, renewable energy generating sites, timber, grazing rights, etc.) found on these federal lands to the private sector and collects substantial fees, taxes, royalties and lease payments for these rights.

3. Recognizing the principles of cooperative federalism, Congress has consistently legislated revenue sharing programs to allow states and local governments to deliver services despite the presence of tax-exempt federal lands within their borders. Congress shares revenues derived from federal lands so that states and local governments can effectively provide infrastructure and services that are contemplated by our federal system of governance.

4. Historic agreements and programs related to the compensation of state and local governments, codified in federal law, include but are not limited to:

   - Twenty Five Percent Fund Act of 1908.
   - Bankhead Jones Tenant Act.
   - Mineral Leasing Act of 1920.
   - Taylor Grazing Act.
   - Geothermal Steam Leasing Act.
   - Renewable energy leasing revenues from development on Forest Service lands, Bureau of Land Management lands, and waters off the coasts of the western states.
   - Federal Oil and Gas Royalty Management Act of 1982.
   - Abandoned Mine Lands grants to states consistent with 2006 Amendments to the Surface Mining Control and Reclamation Act.

5. As a result of federal efforts to address the federal budget deficit, state funding for these historic federal agreements and programs have previously been targets of cutbacks.

6. These agreements and programs are not proper subjects for cutbacks. For example, royalty payments owed to states are not federal expenditures. Federal land management agencies simply administer the distribution of those revenues to states. The federal government has

no discretion over this money. Payment to the states is the only authorized use for these revenues.

7. In addition, federal processes and regulations can create uncertainty regarding sales and leases of these federal resources or slow the pace of sales and leases of these federal resources, adversely affecting states' receipt of their share of these essential revenues.

8. Federal land management agencies frequently examine and revise regulations and policies governing federal management of valuable resources. For example, the Department of the Interior is currently proposing changes that could affect decisions related to temporary rental fee and royalty rate reduction applications for non-energy solid leasable minerals.

9. Despite the states' substantial interest in the revenues associated with these programs and agreements, the federal government is typically inclined to limit the states from participating in the decisions affecting these revenues. States' participation in these processes has also been limited to that of a general stakeholder, instead of on a government-to-government basis.

B. GOVERNORS' POLICY STATEMENT

1. The federal government must honor its statutory obligations to share royalty and lease payments with states and counties in the West to compensate them for the impacts associated with federal land use and nontaxable lands within their borders.

2. Shared revenues and payments to states and counties under these programs should not be treated as federal expenditures or income. The federal government has no option except to transfer these pass-through funds to qualifying states. The federal government may not make payment of these funds to any other program or entity.

3. Governors support legislation that clarifies the unique nature of these programs and that assures states will receive full payment of statutorily guaranteed shares of receipts.

4. Governors support legislation, regulatory changes, and agency practices that provide transparency and certainty, ensure fair value for the American public, reflect changes in market conditions, and more efficiently administer the sales and leases of the resources on these federal lands.

5. Governors support efforts to eliminate the two percent administrative fee that is imposed on states' annual revenues. Given the revenue sharing nature of these funds, federal agencies and states should share these administrative costs.

6. Governors support early, meaningful, substantive, and ongoing state engagement in the development, prioritization, and implementation of federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning. The U.S. Congress and appropriate federal agencies should provide expanded opportunities for such involvement. This includes when considering changes to federal resources and royalty policy, especially during regulatory processes that may affect royalty payments to states.

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 for the most current copy of a resolution and a list of all current WGA policy resolutions.

Policy Resolution 2020-04

Financial Assurance Regulation

A. BACKGROUND

1. Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9608(b), requires EPA to promulgate financial responsibility requirements for industrial facilities that take into account the risks associated with their use and disposal of hazardous substances.

2. CERCLA 108(b) is meant to protect the public, and state and local government from financing reclamation if industry goes out of business or fails to meet its reclamation obligations.

3. In 2009, EPA selected hardrock mining as the first industry sector for its analysis of whether federal financial assurance requirements under CERCLA108(b) were needed. In response, Western Governors expressed their concerns to EPA that any such financial assurance requirements could be duplicative of state requirements and could even preempt them entirely. The Governors also questioned whether EPA had the resources to implement and evaluate financial assurance for hardrock mines, since assurance calculations usually reflect very site-specific and ecological reclamation needs, tasks, and costs.

4. All western states have developed regulatory financial assurance programs to evaluate and approve the financial assurances required of mining companies. The states have developed the staff and expertise necessary to independently calculate the appropriate amount of the financial assurance, based on the unique circumstances of each mining operation and environmental and ecological requirements of each state.

5. Western states have a proven track record in regulating mine reclamation in the modern era – including for hardrock mines – having developed appropriate statutory and regulatory controls and are dedicating resources and staff to ensure responsible industry oversight.

6. In 2018, EPA determined that the agency would not issue financial assurance requirements under CERCLA 108(b) for the hardrock mining sector. The U.S. Court of Appeals for the D.C. Circuit upheld EPA's decision.

7. In 2017, EPA had also announced that it would examine the following sectors to see if they warrant financial assurance requirements under CERCLA 108(b): electric power generation, transmission, and distribution industry; petroleum and coal products manufacturing industry; and chemical manufacturing industry (collectively, "other sectors").

B. GOVERNORS' POLICY STATEMENT

1. Because mine reclamation is needed primarily to protect adjacent waters, it is both appropriate and consistent with Congressional intent to recognize the states' lead and primary role in regulating water related impacts of mine reclamation, including the associated financial assurance.

2. Western Governors believe that states currently have effective financial responsibility programs for hardrock mining that should not be duplicated or preempted by EPA pursuant to CERCLA 108(b).

3. Prior to determining whether to pursue CERCLA section 108(b) financial assurance regulations for any of the other sectors, EPA should engage in substantive pre-publication consultation with Western Governors and state regulators regarding existing state regulations to prevent duplication or preemption of existing state law.

    a. This should include substantive pre-publication consultation with states during development of rules or decisions and a review by states of any proposal before a formal rulemaking is launched.

    b. EPA should also take into account state data and expertise in development and analysis of underlying science that serves as the legal basis for federal regulatory action.

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.

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Policy Resolution 2021-09

Cleaning Up Abandoned Hardrock 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 have engaged in or are interested in voluntarily cleaning up abandoned mines. Parties who voluntarily engage in abandoned mine cleanup, but have no liability or responsibility requiring them to clean up the abandoned mine, 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 remining 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.

7. In many western states, abandoned hardrock mine cleanup projects on public lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs. Allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

8. 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.

9. Because of safety and environmental concerns, the majority of abandoned hardrock mine sites remain idle without any type of reuse. The U.S. Environmental Protection Agency has identified developing solar projects on abandoned hardrock mine sites as an innovative solution to generate energy and return abandoned mine lands to productivity while considering economic, environmental and social effects.

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 liabilities associated with remining, 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, 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 that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate affected waters, and implement abandoned mine programs. These 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.

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 increased federal funding and workforce capacity dedicated to addressing 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 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.

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