
March 17, 2022

The Honorable Martin Heinrich
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

The Honorable James Risch
United States Senate
483 Russell Senate Office Building
Washington, DC 20510

Dear Senator Heinrich and Senator Risch:

Western Governors applaud the introduction of S. 3571, the Good Samaritan Remediation of Abandoned Hardrock Mines Act, and are encouraged by the bipartisan support it has attracted to date. Hardrock mine reclamation is vitally important to the health of western communities and ecosystems, and the pilot program proposed in your bill would help advance essential legal protections for Good Samaritans seeking to cleanup abandoned mine sites. By addressing Good Samaritans' exposure to Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act liabilities, the proposed pilot program has the potential to fully unlock the power of the Hardrock Mine Reclamation Fund established by the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

Western Governors have supported the creation of legal protections for Good Samaritans since at least 1995. Western Governors' Association (WGA) Policy Resolution 2021-09, *Cleaning Up Abandoned Hardrock Mines in the West* (attached), specifically calls for the type of pilot program this legislation would create. The program will help pave the way for a comprehensive and permanent mechanism to address the 22,500 mines that the Government Accountability Office deems hazardous to the environment.

Western Governors support the general design of the proposed program, but believe improvements are necessary in one area. The legislation would authorize the Environmental Protection Agency to lead the permit application process and determine which entities are eligible for Good Samaritan status. Western Governors believe that individual states are best suited to determine Good Samaritan eligibility and that states should be allowed to review and determine the adequacy of Good Samaritan reclamation plans. This principle is outlined in Policy Resolution 2021-09.

We appreciate your bipartisan efforts to address liability concerns for Good Samaritans and accelerate the pace of mine reclamation. We look forward to working with you as the Good Samaritan Remediation of Abandoned Hardrock Mines Act moves through the legislative process.

Sincerely,



Brad Little
Governor of Idaho
Chair, WGA



Jared Polis
Governor of Colorado
Vice Chair, WGA

Attachment



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 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.
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 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, 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.

This resolution will expire in June 2024. 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.