



## Western Governors' Association Policy Resolution 10-3

### *Cleaning Up Abandoned Mines in the West*

#### A. **BACKGROUND**

1. Mining has a long history in the West. The western states are rich in hardrock minerals like gold, silver and copper as well as coal, much of it low sulfur.

#### Hardrock Mines

2. Historic hardrock mining in the West, unregulated until recent years, has left a legacy of thousands of historic abandoned mines, which pose a threat to human health and safety and to the environment. These historic mines pre-date modern federal and state environmental regulations which were enacted in the 1970s. Often a responsible party for these mines is not identifiable or not economically viable enough to be compelled to clean up the site. Thousands of stream miles are impacted by drainage and runoff from such mines, one of the largest sources of adverse water quality impacts in several Western states.
3. Cleanup of abandoned hardrock mines is hampered by two issues -- lack of funding and concerns about liability. Both of these issues are compounded by the land and mineral ownership patterns in mining districts. It is not uncommon for there to be dozens of parties with partial ownership or operational histories associated with a given site.
4. Recognizing the potential for economic, environmental and social benefits to downstream users of impaired streams, Western states, municipalities, federal agencies, volunteer citizen groups and private parties have come together across the West to try to clean up some of these abandoned hardrock sites. However, due to questions of liability, many of these Good Samaritan efforts have been stymied.
5. Potential liability exists for Good Samaritans under Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permit program because a party can inherit liability for any discharges from an abandoned mine site remaining after their cleanup efforts, even though the volunteering remediating party had no previous responsibility or liability for the site, and has reduced the water quality impacts from the site by completing a cleanup project.
6. Potential liability exists for Good Samaritans under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

7. Liability concerns also prevent mining companies from going back into historic mining districts and re-mining old abandoned mine sites or doing volunteer cleanup work. While this could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for cleaning up the entire abandoned mine site.

### Coal Mines

8. Congress authorized creation of the Abandoned Mine Land (AML) Program under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program is funded by fees from current coal production. The coal AML program provides funding to states to restore lands mined for coal and abandoned or left inadequately restored before August 3, 1977.
9. Section 409 of SMCRA also authorizes states to use AML grant funds to address high priority non-coal mine hazards. While the state AML programs are limited to using SMCRA funds to only address public health and safety hazards at abandoned non-coal mines, and not purely environmental threats, the state programs have employed this provision to make a dent in the public safety threats posed by abandoned mines.
10. In December 2006, Congress amended Title IV of SMCRA to reauthorize the fee collection authority, to provide for the distribution of the unappropriated state-share balance of the AML Trust Fund, to increase the minimum program funding to \$3 million per year. Section 409 of SMCRA was not amended and no limits were placed on non-coal projects.
11. However, the Office of Surface Mining (OSMRE) adopted rules to severely limit certain states from using AML funds for non-coal mine hazards. For Colorado, New Mexico and Utah, over 70 % of their funds are now off limits for non-coal projects. These states are required to fund lower priority coal mine reclamation projects while higher priority non-coal hazards would remain unfunded. The Administration is also proposing to deny AML funds to states which have “certified” completion of coal AML projects, contrary to agreements codified in 2006.
12. The new interpretation of SMCRA by OSMRE conflicts with the clear language of the law authorizing the use of coal AML funds for high priority non-coal mine hazards. OSMRE’s new interpretation will leave the public exposed to significant hazards to public health and safety at abandoned non-coal mines being ignored while states are required to expend coal AML funds at lower priority coal mine sites.

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

### *Hardrock Mines*

1. Western Governors believe Congress should amend the Clean Water Act to protect volunteering remediating parties who conduct authorized remediation from becoming legally responsible under section 301(a) and section 402 of the CWA for any continuing discharges from the abandoned mine site after completion of a cleanup project, provided that the remediating party -- or "Good Samaritan" -- does not otherwise have liability for that abandoned or inactive mine site. Legislative and administrative remedies to address potential CERCLA liabilities should also be considered.
2. The Governors encourage federal land management agencies, such as the U.S. Bureau of Land Management, the National Park Service and the U.S. Forest Service, as well as support agencies, such as the U.S. Environmental Protection Agency, the U.S. Geological Survey and the U.S. Army Corps of Engineers, to coordinate their abandoned hardrock mine cleanup efforts with state efforts to avoid redundancy and unnecessary duplication, and to employ the expertise and knowledge of state AML programs.
3. Western Governors urge Congress to designate a dedicated source of funding for the cleanup of abandoned hardrock mines.

### *Coal Mines*

4. Western Governors urge the Administration to uphold the intent of Congress to allow states to exercise discretion on the use of their AML grant funds to address high priority non-coal abandoned mine hazards and to return funds due "certified" states under existing law.
5. Western Governors urge Congress to adopt legislation to restore the flexibility under SMCRA for the states to use AML funds at both coal and high priority non-coal abandoned mine sites and to ensure appropriate liability protections remain in place.

### **C. GOVERNORS' MANAGEMENT DIRECTIVES**

1. WGA staff will advance the policy positions stated above in appropriate venues as warranted and report to Governors and Staff Council on progress and impediments.
2. WGA shall transmit this resolution to Congress, the Secretary of the Interior, Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget and other appropriate parties as warranted.

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