



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
Abandoned Hardrock Mine Cleanup**

**Deadwood, South Dakota
September 16, 2021**

WHEREAS, the General Mining Act of 1872 allowed individuals to obtain exclusive rights to valuable hardrock mineral deposits on land belonging to the United States without requirements to reclaim the land until the 1970s; and

WHEREAS, hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper; and

WHEREAS, as part of this past, the West contains historically mined and abandoned hardrock mines on public and private land, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the needed cleanup and reclamation; and

WHEREAS, a recent report from the Government Accountability Office (GAO-20-238) found that the United States has at least 140,000 abandoned hardrock mine features on federal land of which 22,500 pose or may pose environmental hazards, including adverse effects to water quality; and

WHEREAS, most of these sites are in many western states with a significant portion located wholly or partially on public land managed by the U.S. Forest Service or the U.S. Bureau of Land Management; and

WHEREAS, significant hardrock mining has also occurred on tribal lands; and

WHEREAS, there could be more than 390,000 additional abandoned hardrock mine features on federal land that have not yet been characterized; and

WHEREAS, many of the abandoned hardrock mines are co-located on public and private land; therefore, consideration should be given to the private land component as well when assessing full mine site cleanup; and

WHEREAS, 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 that are used to identify state-specific priorities with respect to abandoned hardrock mining issues; and

WHEREAS, there are numerous economic, environmental, and social benefits from remediating and reclaiming lands and waters impaired by abandoned hardrock mines; and

WHEREAS, water quality impacts can be severe, with water quality conditions resulting in impacts to drinking water supplies, aquatic life, recreational uses, agriculture and livestock; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) has identified developing alternative industrial development projects that are bonded for future cleanup on abandoned hardrock mine sites as an innovative solution to generate benefits and return abandoned mine lands to productivity while considering economic, environmental and social effects; and

WHEREAS, establishing a productive post-mining land use is an important safety and quality of life issue for states, especially where abandoned hardrock mine sites exist with encroaching development, have an increased prevalence of outdoor recreation opportunities such as off highway vehicle usage, or where the sites can meet the growing demand for renewable energy development and storage; and

WHEREAS, the cleanup of abandoned hardrock mines is hampered by two issues – (1) insufficient state and federal resources and (2) concerns about liability, compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site; and

WHEREAS, 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 (GAO-20-238); and

WHEREAS, states, tribes, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility for the sites (referred to as Good Samaritans in this resolution) have engaged in or are interested in voluntary restoration work at abandoned hardrock mines; and

WHEREAS, Good Samaritans currently have potential liability for their voluntary cleanup under the Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) despite the fact that they did not previously operate or own the mine. Such Good Samaritans have expressed interest in voluntarily bearing the costs of the cleanup, and they could provide numerous benefits if they were able to remediate the abandoned mine, but are dissuaded by liability concerns; and

WHEREAS, liability concerns also prevent other active modern mining companies from re-mining or voluntarily cleaning up abandoned mines; and

WHEREAS, “Good Samaritan” bills have been introduced in Congress over the years to protect non-liable entities that are willing to voluntarily clean up these sites from legal liability under CERCLA and CWA; and

WHEREAS, in 2020 the EPA created a new office, the Office of Mountains, Deserts, and Plains, to promote Good Samaritan cleanup efforts and foster partnerships with states, tribes, local communities and other stakeholders to ensure more efficient cleanup of both Superfund and non-Superfund sites in the West, including abandoned mines; and

WHEREAS, in many western states, abandoned hardrock mine cleanup projects on public and private lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs if sufficient funding were available, and allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council (WSWC) supports increased federal funding and workforce resources dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs, with a priority on those sites that are contributing to CWA 303(d) impaired waters or have been otherwise prioritized by states.

BE IT FURTHER RESOLVED, that increased federal funding appropriated by Congress should not be used to offset or otherwise reduce existing resources allocated to states to work on abandoned hardrock mine issues and should be delivered to state and federal agencies through a clear,

transparent, and efficient manner that maximizes project implementation work at sites prioritized by states.

BE IT FURTHER RESOLVED that the WSWC supports a rapid and extensive inventory and characterization of environmental hazards and impacts, including water quality, caused by abandoned hardrock mines on federal, state, tribal, and private land across western states and working collaboratively with states and tribes, relying on their expertise to prioritize sites for cleanup.

BE IT FURTHER RESOLVED that the WSWC supports efforts by the EPA Office of Mountains, Deserts, and Plains to advance and resolve states' priority abandoned mine issues by helping states to leverage federal programs and enhance collaboration across federal agencies, states, regional, local, non-profit, and private partnerships to create an "all-hands" approach to finding creative solutions, including mining actions identified in EO 14017, for the cleanup of abandoned hardrock mine sites and to accelerate remedial efforts using the most advanced technology solutions.

BE IT FURTHER RESOLVED that the WSWC supports exploration of new ideas for moving projects forward, such as using Brownfields' Bona Fide Prospective Purchaser protections or other methods of promoting liability protections until such time that a Good Samaritan program can be established.

BE IT FURTHER RESOLVED that the WSWC supports legislation to amend the Clean Water Act to protect Good Samaritans and States from inheriting perpetual liability for the site and to include flexibility and mechanisms for States to implement creative approaches to remediation (e.g., use of Supplemental Environmental Projects obtained through settlements).

BE IT FURTHER RESOLVED, the WSWC supports 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.

BE IT FURTHER RESOLVED, the WSWC calls on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA, CWA and RCRA liabilities for Good Samaritans, while 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 entities, and the mining industry) from improving conditions at abandoned mines.