

RESOLUTION NO. 2012-006

**A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
DECLARING ITS SUPPORT FOR IMMEDIATE CREATION AND IMPLEMENTATION OF A
FEDERAL POLICY AND/OR PROCESS ALLOWING BONA FIDE GOOD SAMARITANS
TO MEASURABLY IMPROVE WATER QUALITY THROUGH CLEANUP OR MITIGATION OF
ACID MINE DRAINAGE FROM ABANDONED MINES AND PROVIDING ASSURANCE TO
GOOD SAMARITANS THAT THEY WILL NOT INCUR LONG-TERM LEGAL LIABILITY
EVEN IF CLEAN WATER ACT/TMDL STANDARDS CANNOT BE ACHIEVED**

WHEREAS, a "Good Samaritan" is an entity (a person, group, consortium, NGO, etc.) with no legal responsibility for the site, pollution at the site, or prior mining activity at the site; and

WHEREAS, current federal laws and policies do not allow a process for "Good Samaritans" to improve water quality through cleanup or mitigation of acid mine drainage from abandoned mines that involves the long-term discharge of water without fear of liability, becoming financially responsible, and subject to citizen lawsuits if improved water quality does not fully meet Clean Water Act/TMDL standards; and

WHEREAS, over the past couple of decades several different pieces of federal legislation have been introduced in the House and the Senate designed to address the CERCLA and Clean Water Act liability for existing conditions at AML sites; and

WHEREAS, the concept of Good Samaritan policy is to provide appropriate liability relief to bona fide "Good Samaritans" that voluntarily clean up acid mine drainage at abandoned hard rock mines and mitigate environmental hazards rather than just physical hazards; and

WHEREAS, there are hundreds of thousands of abandoned mines in the United States with acid drainage issues that are degrading water quality, making it more expensive to provide potable water, damaging potential fisheries, causing environmental degradation, and making it impossible for even small, modern, appropriate mining to take place because a discharge permit cannot be obtained by mining operations that would operate in compliance with current laws, standards, and best management practices in waterways designated as impaired; and

WHEREAS, due to the vintage of these abandoned mines, many well over 50-100 years old, there is no Financially Responsible Party and the owner of the property is not the party that caused the mine or drainage; and

WHEREAS, the presence of impaired waters increases costs for providing potable drinking water in headwaters communities, and causes loss of economic benefits from reduced agricultural activities, loss of economic benefits from appropriate modern mining operations not being able to get discharge permits, and loss of economic benefits from reduced or lack of fisheries that allow for recreational opportunities; and

WHEREAS, some of these abandoned mine sites may have been identified as a priority for cleanup under the Environmental Protection Agency (EPA) Superfund program; however, this program for many reasons cannot quickly address the issue that local Good Samaritans know intimately; and

WHEREAS, while there is natural acid drainage from the inherent geology of this San Juan Mountains area, improving the water quality through clean up of these abandoned mine portals could open up important economic opportunities for new small and medium scale hard rock mines, more productive agricultural operations, improved outdoor recreation, and less expense of procuring potable municipal water for residents downstream; and

WHEREAS, all of these outcomes will contribute to diversification of the economy, provide new quality jobs; and lessen the burden on taxpayers; and

WHEREAS, local Good Samaritans exist in the Uncompahgre and Animas watersheds and are ready to clean up these abandoned mines when the threat of liability is removed; and

WHEREAS, Ouray County and its communities need resolution of this issue immediately, and it may be possible for the issue to be resolved administratively rather than legislatively; and

WHEREAS, no matter how providing bona fide "Good Samaritans" protection from liabilities is achieved, this needs to be accomplished immediately because it will allow impacted/impaired areas to realize important economic benefits in areas having limited opportunities.

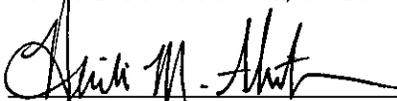
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO:

1. Ouray County recognizes that there is an immediate need for the EPA to eliminate disincentives, and establish incentives and clearly limiting liability for voluntary, cooperative efforts aimed at improving and protecting water quality impacted by historic mining activity where there is no financially responsible party; and
2. Ouray County supports the immediate creation and implementation of a process or system, either administratively by the EPA or through federal legislation, to provide bona fide "Good Samaritans" assurance they will not incur long-term legal liability for discharges at abandoned mine sites where they have performed cleanup work, provided that the cleanup work is done in accordance with applicable agreements and measurably improves water quality, even if Clean Water Act/TMDL standards cannot be achieved.
3. This process or system must also preserve the property rights of the landowners.

Adopted this 14th day of FEBRUARY, 2012.

Voting for: Commissioners Albritton, Fedel and Padgett
Voting against: None

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO


Heidi M. Albritton, Chair


F. Mike Fedel, Vice-Chair


Lynn M. Padgett, Commissioner




Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board