



**GOOD SAMARITAN PROTECTION TO ENHANCE
ABANDONED MINE LAND CLEANUP-
FINDING A PATH FORWARD**

SUMMIT REPORT

JULY 2018

<http://www.mmsa.net/AMLPage.html>

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1.0 EXECUTIVE SUMMARY

“This is the best conference that I have attended in over 20 years.”

*Stan Dempsey, Sr.
Retired President & CEO, Royal Gold*

INTRODUCTION

In the fall of 2016, the Keystone Policy Center and the Colorado School of Mines Payne Institute for Earth Resources convened a *“Summit on Reasonable Expectations in Mine Closure.”* Shortly thereafter, the Mining and Metallurgical Society (MMSA), which was in the early stages of its own planning cycle for an event focusing on Abandoned Mine Lands, initiated a conversation with CSM to explore partnership opportunities that could leverage the respective resources and expertise of each organization. From this dialogue, the concept of a biannual meeting-series to be branded as the “Golden Summits” was proposed to bring diverse stakeholders together to discuss issues of import to the minerals industry and society. CSM would coordinate a fall Summit, and MMSA would coordinate a Summit the following spring.

The complexity of impacts, technical challenges and administrative obstacles presented by Abandoned Mine Lands rank amongst the top issues the minerals industry and impacted stakeholders have long wished to resolve. It was agreed that now was an excellent time for both organizations to collaboratively direct their efforts and provide forums in which all stakeholders concerned about Abandoned Mine Lands can come together to resolve those issues.

The subsequent Fall 2017 Summit, *A Framework to Manage the Environmental Reality of Orphaned and Abandoned Mine Lands*, was convened by the Colorado School of Mines Payne Institute of Earth Resources. The objectives for that Summit were to provide a forum to (1) discuss the status of current abandoned mine inventories, (2) review technology and site best management practices and (3) establish networking opportunities for further collaborations.

Building on the momentum established by the two previous Summits, MMSA directed the focus of the Spring 2018 Summit to build consensus on, and develop an action plan for, the critical language and programmatic components needed in Good Samaritan legislation that will protect those willing and able to voluntarily improve orphaned and abandoned mine sites in the United States. In recognition of its ongoing success in improving wildlife habitat on abandoned mine lands, MMSA reached out to Trout Unlimited to become an additional co-sponsor of the Spring 2018 summit.

SPONSORS

This conference, held on April 26, 2018 in Golden, Colorado was sponsored by the Mining and Metallurgical Society of America (MMSA), Colorado School of Mines (CSM), and Trout Unlimited (TU). MMSA in its leadership role was also able to garner an expanding number of supporters (See Appendix C).

PURPOSE

Identify necessary liability protection from applicable environmental laws that advance closure and remediation of the identified pilot/demonstration projects.

OUTCOME

A diverse coalition of stakeholders working to advance pilot/demonstration project-focused Good Samaritan legislation that enhances (or advances) Abandoned Mine Land (AML) cleanup.

The conference was attended by 111 individuals representing a broad diversity of stakeholders with an interest and expertise in AML, including academia, state and federal government agencies, industry organizations, technical and policy consultants, legal counsel, conservation groups and congressional staff. Ten speakers provided the delegates with an excellent high-level overview of the technical, legal, social and political issues surrounding AML which drove the discussions throughout the day.

This document is a compilation of the information and ideas exchanged during the Summit. It includes both abridged summaries of each session summarized from notes taken by committee organizers, which were subsequently reviewed by the invited speakers and organizing partners. This report, all available presentations and accompanying documents are available on the MMSA AML Summit Web page (<http://www.mmsa.net/AMLPage>).

PLENARY SESSION – LAYING OUT THE CHALLENGES

Laura Skaer of the American Exploration & Mining Association led the early morning plenary panel discussion, which included the following speakers:

- ◆ Jeff Graves, Colorado Division of Reclamation, Mining, and Safety (DRMS)
- ◆ Chris Wood, President, Trout Unlimited
- ◆ Tawny Bridgeford and Amanda Aspatore, National Mining Association (NMA)
- ◆ Dustin Sherer, Legislative Aide to Senator Cory Gardner

Laura Skaer provided an overview of past efforts to provide Good Samaritan protection over the past 25 years. During this period, various interested parties have unsuccessfully attempted to pass national legislation providing protection for parties doing closure and restoration activities on Abandoned Mine Lands in the United States. The purpose of this conference is intended to “break the logjam” on the Good Samaritan issue by facilitating constructive engagement with diverse groups interested in this subject. Funding for projects can come from several sources and is a subject for a future conference or planning session.

Jeff Graves talked about AML work done on sites in Colorado. On some sites, DRMS is involved in the operation and maintenance of a site. They also get involved in cost/benefit analysis, define problems of sites and prioritize sites for AML closure. The key to cleanups was to use appropriate remedies that were realistic and achievable. Partnerships between owners and regulatory agencies are critical.

Chris Wood spoke from the conservation standpoint and described how TU has worked with State and Federal agencies to get the requisite permissions and permits to clean up AML sites. He presented several examples of successful cleanup projects TU has completed in partnership with other conservation organizations, watershed associations, government agencies and private industry. He recognized there is still some considerable trepidation about cleaning up abandoned mines. He added however that after we demonstrate “that we know how to do this and do it well”, Congress should be more comfortable with authorizing legislation and extending the protections permanently. Mr. Wood closed his remarks by saying that TU supports applying “common sense to common problems for the common good” and that “if there was ever a time to get Abandoned Mine Land legislation through, it is now.”

Tawny Bridgeford and Amanda Aspatore, two lawyers with the National Mining Association (NMA) presented legal considerations and challenges faced by their members. Although NMA members are interested in funding and participating in AML cleanup efforts, there must be Good Samaritan protections to proceed. The main issues are related to CERCLA and Clean Water Act protection. The current Clean Water Act is at cross purposes to AML cleanup. The CWA focuses on discharge water quality, primarily from operating or recently closed industrial facilities. AML cleanup projects focus on improving the currently existing situation of water quality discharging from old, historic, pre-CWA mining activity. In AML restoration, the focus of the work is to improve existing conditions. The CWA ignores, and often prevents, partial improvement of water quality discharged from a site.

Dustin Sherer presented the Congressional Perspective. Good Samaritan legislation has been proposed many times and little progress has been made. He indicated we need Good Samaritan protection from the CWA, a scope of success in AML restoration, a definition of success – all written into a single piece of legislation. Sherer stated the issues involve 1) liability protection; 2) definition of success; and 3) define a clear and efficient permit system which meets the concept of “improving water quality”.

MID-MORNING SESSION – ISSUES IMPACTING AML CLEAN-UP

This session was led by Dennis Ferrigno and included legal, political, reclamation and closure, government, and EPA perspectives. Speakers included:

- ◆ Carolyn McIntosh, a Partner at Squire Patton Boggs
- ◆ Kathy Benedetto, Senior Advisor to the Director of the Bureau of Land Management
- ◆ Jeff Parshley, Group Chairman and Corporate Consultant of SRK Consulting
- ◆ Erin Chancellor, Counsel to Administrator, U.S. Environmental Protection Agency

Carolyn McIntosh pointed out that liability has always been a sticking point in AML cleanup. Other issues include determining the Potentially Responsible Party (PRP), CERCLA citizen lawsuits, and issues with state regulations. Her “Takeaway” was that the current System is not simple but small steps are available within the system. Good Samaritan has merit.

Kathy Benedetto talked about how Good Samaritan might affect BLM’s extensive land holdings. Work on BLM lands is prioritized based on safety and human health hazards. The National Park Service should be involved. The USGS is developing a new minerals location database which includes location of mineral deposits, mines, watersheds, and other areas affected by mining.

Jeff Parshley gave an overview of Lessons Learned by Industry in mine closure which included much larger sites in need of restoration. Lessons learned by industry during mine closures include:

- ◆ Every site is different,
- ◆ Large gap between theory and implementation of closure,
- ◆ Closure approaches should be risk-based (closure of normal operations is different from AML activities),
- ◆ Regulations and standards need to be reviewed and updated regularly.

Site factors include biodiversity, site features, stakeholder (both local and remote), land status, water, access, benefit, cost effectiveness, and Good Samaritan input.

Erin Chancellor talked about what EPA can do to work within the current regulatory system to maximize AML closure. She acknowledged that these two processes can be cumbersome and time consuming, and that EPA was working internally to define better paths forward regarding AML site cleanup. Administrative tools available under the 2007 EPA Guidance Document and 2012 memo include comfort letters and CERCLA liability statement agreements (both of which are time consuming processes), covenants with DOI approval to not sue, State voluntary cleanups, and looking at opportunities to improve water quality at sites (“don’t let perfect be the enemy of good”). The 2012 memo was meant to correct some of the pitfalls of the 2007 guideline document; this memo did not go far enough to provide clarity on how to function as a “good Samaritan”.

Erin stated that there are internal initiatives in EPA exploring ways that it, without legislative actions, can address AML working within its existing framework, and that these initiatives had not been developed enough to discuss at this time. She shared this to emphasize EPA’s desire to address AML, welcoming input from diverse stakeholders toward advancing AML clean up initiatives.

AFTERNOON SESSION – BREAKOUT SESSIONS

Ann Carpenter facilitated this portion of the workshop. Nine breakout groups were organized¹ to build consensus on the critical language and programmatic components needed to advance Good Samaritan legislation focused on pilot/demonstration projects. Two key questions helped to drive discussions and outcomes of the breakout groups, including:

- What components MUST BE INCLUDED in the legislation; and
- What components MUST NOT BE INCLUDED in the legislation?

¹ The breakout design was for 10 groups, but two groups were combined.

After the building blocks for the legislation were discussed and as time allowed, avenues for partnership, the ideal process for selection of candidate demonstration sites, and other issues raised by the morning sessions were discussed. After an approximately two hour working session, the delegation reconvened and leaders from each group provided a recap of their discussions. The breakout session results are included in Section 2.3 of this report and a companion spreadsheet is available on the MMSA AML Web site.

The common themes and topics discussed included:

- ◆ Cleanup standards/evaluation criteria
- ◆ Approval process/timeline
- ◆ Liability
- ◆ Lawsuits
- ◆ Site selection criteria/process.
- ◆ Terminology
- ◆ Financial assurance
- ◆ Regulatory authority
- ◆ Reprocessing
- ◆ Eligibility
- ◆ Community/stakeholder involvement
- ◆ Incentives
- ◆ Monitoring
- ◆ Site Characterization
- ◆ Funding
- ◆ Other

The following pie charts summarize the composition of the breakout groups by stakeholder affiliation (Figure 1) and the common themes and issues covered in the discussions (Figure 2).

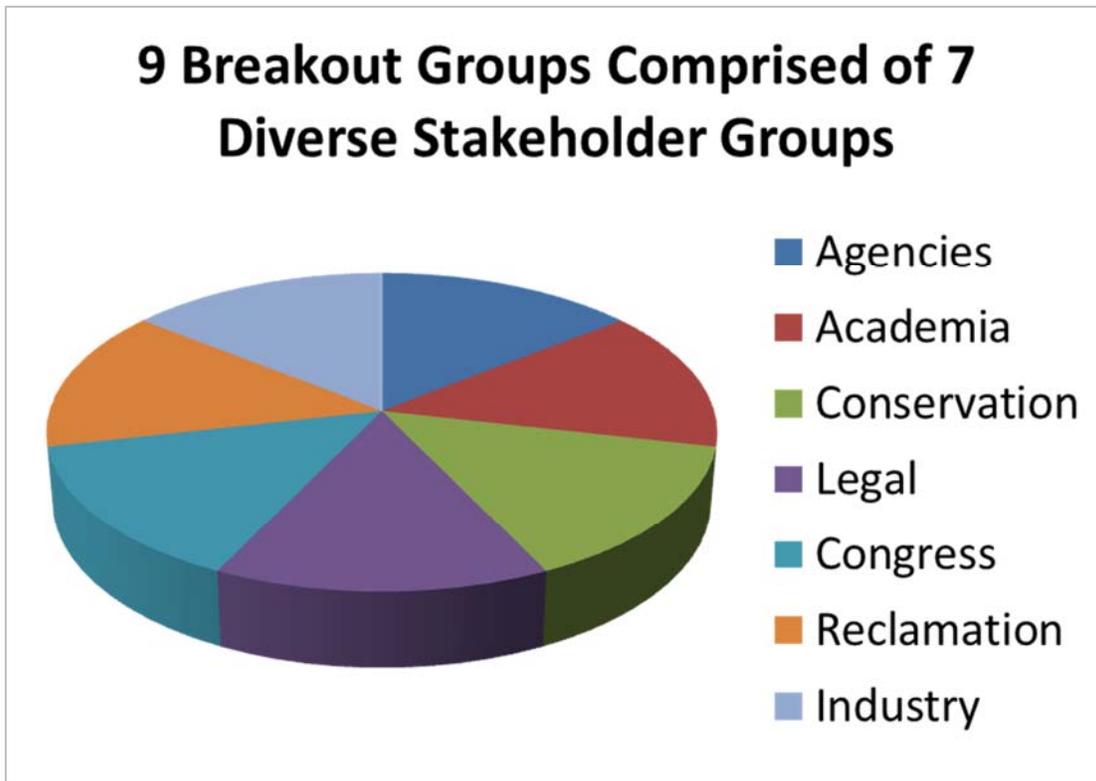


Figure 1: Participating Stakeholders by Affiliation Only. Not Representative of Numbers of Participants

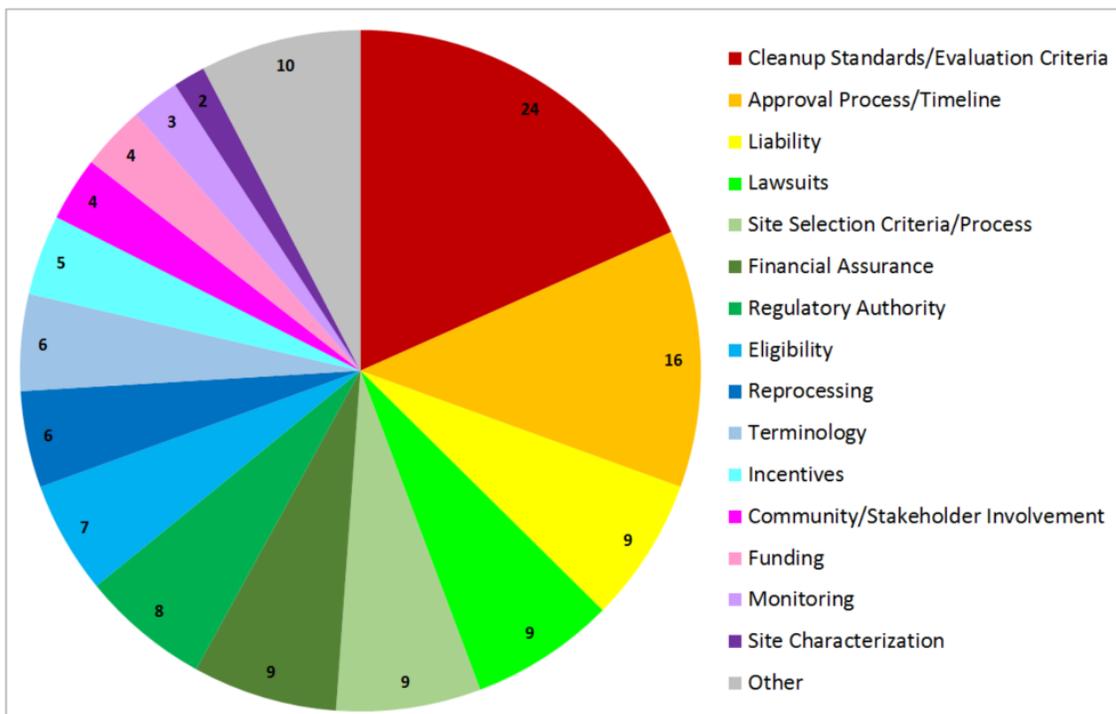


Figure 2: Common Themes and Issues