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

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SUMMIT REPORT

JULY 2018

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

2.0 EVENT SYNOPSIS

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

**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).

**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 diversity of stakeholders with a vested interest in addressing Abandoned Mine Lands in the United States including academia, state and federal government agencies, industry trade organizations, consultants, mining companies and the conservation community.

This document is a compilation of the information and ideas exchanged during the Summit prepared from a series of notes taken by Paul Jones, Karen Jass, Susan Wager and Dayan Anderson. The document was subsequently reviewed by the conference organizers and speakers for accuracy. This report, the individual speaker presentations and other accompanying documents are available on the MMSA AML Summit Web page.

**Welcome:**

Michael Blois, President of MMSA, welcomed the participants on behalf of the Summit co-sponsors and recognized members of the organizing committee and the speakers for their time and efforts in preparing this important event. Mr. Blois then provided the delegation with a brief history of MMSA:

The MMSA is a non-profit association of mineral resource professionals whose members represent all facets of mining and metallurgical interests, both domestic and globally. The MMSA was established in 1908 which makes this year our 110<sup>th</sup> birthday! One of its principal objectives over the years has been to foster helpful cooperation with and between other organizations interested in the mining industry.

The MMSA is not a technical society. However, its membership includes many of the industry's best-known engineers and executives. The Society typically concerns itself with fundamental principles and with problems facing the industry in such areas as legislation, economics and education, as well as environmental concerns, labor relations, and health and safety. From time to time, representatives of the Society testify before legislative bodies and provide advice to federal agencies.

The MMSA administers a "Qualified Professional" membership classification. Regulations previously developed by security commissions have established a "qualified person" designation as a mode of investor protection against the promotion of ill-defined properties being used as a

means to raise funding from the general public for exploration and mining ventures. The Society's program, established in 2006, is currently recognized by security regulators in all Canadian Provinces, Australia and South Africa. It provides for independent certification, by a professional organization with a strong code of ethics, for individuals who prepare mineral property reports.

## 2.1 PLENARY SESSION – LAYING OUT THE CHALLENGES

### **Session Moderator**

Laura Skaer

### **Session Objective**

Identify Social, Political and Legal Issues Impeding Closure and Reclamation of AML Lands.

### **ENHANCED PATHWAY TO AML CLEANUP**

*Laura Skaer - Executive Director, American Exploration & Mining Association*

Ms. Skaer moderated the first morning session. She began by thanking CSM and Trout Unlimited for partnering with MMSA in sponsoring the Conference. Ms. Skaer provided a clear definition of Abandoned Mine Lands as those lands mined and abandoned over 50-100 years ago with no current Potentially Responsible Party (PRP) identified to complete their restoration. She highlighted these are the “historic mines that built America” and they were constructed when society was different, long before environmental protections were put in place.

Ms. Skaer provided a summary of the 25-year political background to the concept of Good Samaritan (Good Samaritan) protection under the Clean Water Act of 1972. During this period, numerous unsuccessful efforts have been attempted by various interested parties to pass national legislation providing protection for parties doing closure and restoration activities on Abandoned Mine Lands in the United States. She identified three categories of AML sites:

- ◆ Some AML lands are just unsightly,
- ◆ Some have public safety issues,
- ◆ Some have water or other issues impacting the environment.

She highlighted that the purpose of this conference is to help “break the logjam” on the Good Samaritan debate by facilitating constructive engagement with all stakeholders genuinely interested in “getting the ball across the finish line.” She encouraged the delegation to (1) stay focused on liability relief and (2) identify language that will ensure that watersheds and communities impacted by these historic AML sites can be improved. She asked that other issues such as royalties and funding should be set aside, or “put in the parking lot” for a future day. Referencing the famous line from the movie *Field of Dreams*, “If we build it they will come,” Ms. Skaer stated that once we get the disincentives and legislative barriers out of the way, the funding will come as partners emerge from the woodwork once the demonstration sites have been selected.

## **STATE GOVERNMENT CONSIDERATIONS FOR AML CLEANUPS**

**Jeff Graves** - Director, Office of Active & Inactive Mines, Colorado Division of Reclamation, Mining, and Safety

The first speaker was Jeff Graves, Director, Office of Active & Inactive Mines, Colorado Division of Reclamation, Mining, and Safety (DRMS). Mr. Graves discussed State Government Considerations in AML closures, including a background on the history of such closings in Colorado. The DRMS regulatory program in Colorado began in the late 1970's for coal mines and in 1980 for non-coal properties and is a separate responsibility to that of the AML properties. Jeff is involved with the "inactive mine reclamation program" on mines operating before 1980. (There was a distinction between coal and hardrock.)

No one state agency in Colorado is responsible for the whole effort on closure of AML properties. DRMS conducts site characterizations, develops remedies for the site, does expectation and achievability analysis, evaluates risk for individual sites and partners with other agencies and groups in closure of AML sites. On some sites DRMS is involved in operation and maintenance of a site. It also gets involved in cost/benefit analysis, define problems of sites and prioritize sites for AML closure. In all this work the background of the site and the nature of erosion and contamination is important. In particular, the important considerations are prioritizing a site for closure, the background of the site, and the potential for disturbance of the environment. The DRMS works with the Colorado Department of Public Health and Environment on water issues related to AML closure.

Mr. Graves used the Saints John AML site in Colorado to illustrate the DRMS work in selecting and closing an AML site. The Saints John property, a former base metal mine, was generating 3 pounds of zinc per day in the outflow from the partially wetland property.

AML sites cleaned up were not bonded by the State. At the Saints John AML Site, the DRMS and the project partners restored wetlands, capped the area, consolidated spoils and revegetated tailings. They used appropriate remedies that were realistic and achievable. Goals were to reduce zinc loading and risk of additional water contamination. This was a non-point source. Partnerships are critical and involve corporate landowners, leverage funding, lead stakeholders, utilization of expertise. Another goal is to diversify project ownership.

## **CONSERVATION GROUP PERSPECTIVES**

**Chris Wood** - President, Trout Unlimited

Mr. Wood made the second presentation to the assembled group. He began by identifying Trout Unlimited (TU) as a 300,000-member organization of individuals in the U.S. interested in fly fishing. He humorously pointed out that "anglers are an optimistic and patient group of people" with the fortitude to stand in freezing water as they "cast feathers at river ghosts." According to the EPA, he added, an estimated 40% of the streams in the western US are affected to some degree by AML and TU has been applying this same patience and optimism to the Abandoned Mine Lands problem since 2003. TU has testified before Congress numerous times and worked with Senator Ken Salazar on legislation that made it past the Environment and Public Works Committee in 2006. TU also worked with the EPA on providing protection from CERCLA (Superfund) liability under both the Bush and Obama administrations.

## Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup – Finding a Path Forward

### Summit Report

For one site in Utah during the Bush administration, it took TU two years to acquire the necessary approvals from the appropriate federal agencies to restore the site and only eight work days to do the work in the field. Federal agencies involved in the project included the EPA, Department of Justice, and the Office of General Counsel. In granting TU the authority to reclaim this site, the EPA absolved TU of 80% of the liability of the site. The EPA told TU this was “the best deal we had ever given a Potentially Responsible Party (PRP)” – but TU was not a PRP – only a volunteer organization cleaning up the site.

Mr. Wood briefly highlighted seven successful AML cleanup projects that Trout Unlimited has been involved with: five hardrock sites in the Western United States and two abandoned coal sites in Pennsylvania. He pointed out that with Good Samaritan legislation, they and others would be able to do much more.

- ◆ American Fork Creek – Pacific Mine in Utah. The project received awards and now supports trout fishing.
- ◆ Morris Creek in ID. 14,000 tons of mine tailings were cleaned. Children planted trees. This site is now a migratory fisheries site.
- ◆ At the Kebler Creek site in Colorado, TU worked with the EPA and the State to restore 80 acres of tailings along with 340 structures in 6 miles of creek. The stream now has wild fish living in the creek.
- ◆ Leavenworth Creek near Georgetown Colorado, 54,000 cubic yards of tailings were removed from 2,500 feet of channel and flood plain to improve water quality.
- ◆ Clear Fork Creek in Montana plus 6 other projects. Fish will respond to change in the streams. They are resilient.
- ◆ In Pennsylvania, TU has been involved in passive treatment of streams in several areas, including Bob Creek. TU worked with NGOs to restore and reclaim 160 acres. Now the stream is naturally reproducing brook trout.

Trout Unlimited has testified on several bills in Congress during the Bush and Obama administrations, working with several Representatives and Senators in an attempt to develop some form of Good Samaritan legislation for a small number of sites (5-10). He recognized there is still some considerable trepidation about cleaning up abandoned mines. He added however that “if we can model that we know how to do this and do it well”, Congress should be more comfortable with authorizing legislation and extending the protections permanently. He suggested the permitting mechanism spelled out in the bill proposed by Congressman Gardner, Senator Bennett and Representative Tipton in the last Congress might be an appropriate model for pilot project-focused legislation. He also suggested that “Tail 3” of Representative Lamborn’s Bill (H.R. 3843) could also serve as an acceptable permitting structure from TU’s perspective.

Mr. Wood also offered the following specific program elements and language that TU would like to see in a pilot project-focused Good Samaritan legislation:

- ◆ Regardless of the permit structure selected, the process should be simple;

- ◆ A permit system is needed that allows for significant improvements in water quality, the implementation of “Best Design Management Practices”, and appropriate monitoring;
- ◆ Good Samaritans should NOT be exposed to liability if the project fails to achieve the required criterion for a given pollutant;
- ◆ Provisions allowing for adequate public notice and comment;
- ◆ Bill should clarify that private landowners who are not responsible for abandoned mines on their property, but who are willing to help should be eligible for liability coverage.
- ◆ Projects should meet applicable state water quality standards to the “maximum extent practicable under the circumstances”
- ◆ The implementing agencies should understand that “under the circumstances” involves working often in the high-elevation, remote, and difficult to access areas.
- ◆ The bill should provide protection from future liability from the CWA and CERCLA when Good Samaritans have completed their permitted activities.

Even if water quality is improved 80%, those making the improvement could still be liable, under the Clean Water Act (CWA) provisions to clean to CWA standard. The work of cleaning up these projects isn't challenging but more could be done if we get the legislation right.

Mr. Wood took the opportunity to recognize those who have partnered with TU over the years including the EPA, the Forest Service, BLM and States of Colorado, Montana, Utah and Pennsylvania. He also recognized the funding support TU has received from Tiffany & Co, Newmont, Freeport-McMoRan, Kinross and other mining companies.

He closed by saying “conservation is the application of common sense to common problems for the common good” and he could think of no issue that fits this definition of conservation better than cleaning up abandoned mines. He added that “if there was ever a time to get Abandoned Mine Land legislation through, it is now.”

### **PRIVATE SECTOR / INDUSTRY CONSIDERATIONS**

*Tawny Bridgeford - Deputy General Counsel, Vice President of Regulatory Affairs, National Mining Association, Washington DC*

Ms. Bridgeford shared that the National Mining Association (NMA) was here because this is an issue of great importance to its members that include both minerals producers and other mining trade associations. NMA has worked on this issue for decades and NMA members want to be a part of the solution. She added that NMA members have been very successful in cleaning up historic facilities on lands they own and operate. She also noted NMA members have successfully funded the work of others, as Chris referenced in his presentation, but NMA members would like to do more than cleaning lands they control and funding projects; they are ready to put “their technology, their resources, their expertise and equipment to work on sites they have never owned or operated or had previous involvement with.” NMA members have the money, resources and no-how and want to help address these legacy sites from over 100 years ago. Unfortunately, she shared that NMA

members have not found a way to do this under existing laws which Amanda will cover in her discussion of the liability concerns under CERCLA and the CWA. She recognized that the EPA over the years has tried to fix some liability concerns under CERCLA with their administrative policies and settlement agreements, but NMA members have not found a way to successfully use those mechanisms on the ground.

She pointed out that NMA also engaged in the conversations around the Salazar bill that Chris mentioned, and agreed it served as the “high water mark” where industry, conservation groups and states came together to support a piece of legislation that everyone hoped would lead to real work on the ground. Unfortunately, there has been a legislative stalemate ever since. When Laura and others brought this demonstration project idea to NMA, they eagerly jumped on board and agreed such an approach could get communities, states, and federal partners really interested and show the general public this problem can be solved by groups like TU, as well as mining companies, and that by working together significant progress could be made that would benefit communities and watersheds in the West.

Ms. Bridgeford then shared what NMA members would like to see in Good Samaritan legislation, many of which were in agreement with the positions of TU:

- ◆ **Eligibility** – Mining companies should be allowed to be part of the solution. They have the technology, expertise, know-how, money, and resources and industry wants to put those to use. She added that industry understands the gravity of the situation in the West and wants to be part of a solution that will improve watersheds and communities adversely impacted by legacy sites. Industry wants to fix and correct the missteps of the past before the advent of modern environmental laws and regulations. She added that most of the proposed legislation out there has allowed mining companies to participate.
- ◆ **Reprocessing** – In recognition that many companies operating today are adjacent or in close proximity to historic tailings, waste rock, underground mine workings, or mine structures. NMA would like to open a conservation that would consider allowing companies to reprocess waste rock tailings that still contain valuable metals and minerals that could be turned into a useful product. The waste generated from that reprocessing could then be deposited into existing engineered and permitted facilities currently regulated by state and federal agencies.
- ◆ **Permitting and Authorization** – Ms. Bridgeford agreed with Chris that a simple permitting and authorization process is needed but offered such a system must still be robust enough to ensure the demonstration projects proceed appropriately and result in an environmental benefit that everyone agrees upon for each project. Ultimately, the permitting program needs to be site-specific and require a work plan and a remediation plan that fits the site.
- ◆ **Appropriate Standards** – Recognizing that some sites will never be able to achieve strict water quality standards, she posed a few questions that might be considered in the afternoon discussions. Should the standard be “maximum extent practicable” or should it be “significant” or a “measured increase?”
- ◆ **Liability Protection** – She reiterated that liability issues tied to existing legislation is the number one reason why industry was here today. She noted that although some progress has been made with CERCLA, CWA is still a “large hammer” and obstacle preventing the

industry from getting more engaged and directly participating in the cleanup of abandoned mine lands.

- ◆ **Selection of Demonstration Sites** – Stakeholders probably have very differing ideas on what types of sites a Good Samaritan permit should cover. Should permits only focus on source control, passive treatments systems or allow for removal of waste material? Should sites be selected based on safety concerns? She suggested that ultimately the scope of the project is going to drive the structure of the permitting program.

*Amanda Aspatore - Vice President, Water Law & Policy, National Mining Association, Washington D.C.*

Ms. Aspatore focused her discussions on the Clean Water Act. She outlined three key components including:

- ◆ The CWA is a stringent statute with civil and criminal liability, and a strict permitting (NPDES) process to adhere to for active industries since CWA inception. Its focus is on penalizing point-source polluters, not remediating sites with historic, pre-CWA water quality issues. The Clean Water Act is focused on “water quality” of active industries, not on what caused the diminution of water quality or remediation, especially when considering past historic sites that pre-date CWA.
- ◆ Water quality criteria were aspirational in nature when CWA was first implemented, with “fishable and swimmable” goals outlined. Water quality criteria are periodically updated and are considered more stringent than 20 years ago. Water quality criteria do not take into account cost or practicability to achieve. Companies or individuals interested in cleaning up sites must adhere to ALL requirements of CWA, many of which are not applicable on AML sites.
- ◆ Need to develop Good Samaritan protection that allows for all companies, individuals, entities interested in AML clean up to advance work—where perfect does not become the enemy of good, allowing for improvements to water quality at AML sites without triggering CWA liabilities.

In reality, the current Clean Water Act is at cross purposes to AML cleanup. The CWA focuses on discharge water quality, primarily from existing or recently closed industrial facilities that postdate CWA inception. AML focuses on improving water quality at old, historic, pre-CWA orphaned (no potential responsible party—PRP) mine sites. In AML restoration, the focus of the work is to improve existing conditions. The CWA ignores, and often prevents, partial improvement of water quality at AML sites.

Companies are frustrated. They are very aware of the impacts and want to be part of the solution. Citizen lawsuits, used to enforce existing CWA provisions are also a concern of industry.

Amanda also stated that legislation is needed to allow for AML clean up and to provide the protections to advance improvements. In support of this position, she then quoted the 4<sup>th</sup> Circuit Court recent action (regarding West Virginia and its coal AML sites): “Congress has determined that a permitting scheme is the crucial instrument for protecting natural resources. It is for Congress to



weigh the consequences of the laws it enacts. In passing the NPDES scheme, Congress considered the cost and decided the benefits were worth it. If Congress somehow struck the balance wrong, it is for Congress to correct it”.

### **CONGRESSIONAL PERSPECTIVE**

*Dustin Sherer - Legislative Aide to Sen. Cory Gardner*

Mr. Sherer indicated that if advocates of Good Samaritan legislation look back to 2000, the problems at that time are the same as today – i.e., no Good Samaritan 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 single Good Samaritan legislation. That is, language is needed which allows cleanup of AML but protects the entity doing cleanup from liability under provisions of the CWA.

Mr. Sherer discussed that in the House of Representatives there were three (3) committees involved which causes serious problems in moving the legislation. On the Senate side, only one committee is the current focus for the Good Samaritan issue. He asked the following questions: *What water quality standards apply to Good Samaritan* and *What is Success?* He indicated that the Citizen Suit Provision was the major impediment to Good Samaritan. Third Party Protection is a KEY issue. Those in opposition to Good Samaritan fear it is a “back door” attempt to gut the CWA – which is not the case at all. A better designation of legislation might be “Environmental Restoration”.

Mr. 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”. This should not be an arduous process for simple projects. Criteria for a Good Samaritan system need to be laid out specifically. A project can’t be written out in detail in legislation, flexibility is needed.

Legislation must have CWA liability protection and flexible parameters. Define a range of criteria that define success.

2.2 MID-MORNING SESSION – ISSUES IMPACTING AML CLEAN-UP

**SESSION MODERATOR**

Dennis Ferrigno

**SESSION OBJECTIVE**

Address Social, Political and Legal Issues Related to Enhanced AML Clean-up.

**LEGAL ISSUES**

*Carolyn McIntosh - Partner, Squire Patton Boggs (US) LLP.*

Ms. McIntosh divided her discussion into three sections: 1) What is the current background; 2) Define the current maze of systems, and 3) How we can advance the ball.

“The Background” – Liability has always been a sticking point in AML cleanup: a) CERCLA, b) CWA, c) maybe RCRA, d) other state and federal liability issues, and e) issues such as NEPA, cultural issues and the Endangered Species Act. In each of these issues, there are broad definitions related to the specific issue at hand. Other issues include the Potentially Responsible Party such as current and past owners of the property; operators and contractors on the property, “arrangers”, “transporters” and others. Examples include the US Government, state governments, hazardous waste issues on the site, etc.

CERCLA citizen suits are the big issue. CERCLA is a broad statute designed to “rope in” liable parties. Provides for Citizen Suits and recovery of litigation fees. Pathways need to be developed to move forward on CERCLA 119 and 101(39). Considerations must include contractors doing AML work. Brownfield exclusions may present a pathway.

CWA Liability – unpermitted discharge must be addressed. Definitions and effects of “discharge”, “pollutant”, “point source”, and “Waters of the U.S.” need to be addressed.

Other issues needing better definition include addressing state effluent limitations, state certification, non-point source issues, and areas of discharge. Citizen Suit provisions are a serious impediment and can apply to individuals, states and federal agencies. The CWA Section 319 is the most used pathway forward as it applies generally to a watershed basis. RCRA Section 3005 related to treatment, storage or disposal of solid waste needs consideration.

Ms. McIntosh referred to the Canyon Resource Kendall Mine in Montana as an example of an active water treatment situation. Her “Takeaway” on the issue was that the current System is not simple but small steps are available within the system. Good Samaritan has merit.

**AML / GOOD SAMARITAN POLITICAL ISSUES**

*Kathy Benedetto - Senior Adviser to the Director of the Bureau of Land Management, Department of the Interior*

Ms. Benedetto discussed the Bureau of Land Management’s (BLM) concerns with Good Samaritan as it might affect BLM’s 245,000 acres of landholdings across the US which contains about 100,000 mining related features on 50,000 AML sites. Of those sites 6,300 have been mitigated to some degree covering 8500 acres of water related features.

Work on BLM lands is prioritized based on safety and human health hazards. Some of the BLM AML activities have been fostered and supported by the Western Governors Association Policy Resolutions in 2016-2017 related to AML activities. The BLM guidelines include: 1) site access; 2) work authorization; 3) determine PRP’s for site; 4) BLM surface management Regulation 1981 using Good Samaritan parties.

Other issues discussed included: 1) National Park Service involvement; 2) USGS development of a new Mineral/mine Deposit database which includes location of mineral deposits, mines, watersheds, and other areas affected by mining. In addition, Ms. Benedetto referred to Secretary Sally Jewell’s testimony on 12/9/15 where she recommended it was not feasible to clean up to standards that did not exist prior to mining of the sites.

**EXAMPLES OF SUCCESSFUL RECLAMATION AND CLOSURE (PROCESSES AND RESULTS) TO GUIDE CANDIDATE SITE SELECTION**

*Jeff Parshley - Group Chairman and Corporate Consultant, SRK Consulting North America*

Mr. Parshley gave an overview of Lessons Learned by Industry in mine closure which included much larger sites in need of restoration. He discussed what industry has learned from successes and failures in such work. Closures can be very complex and involve stakeholders, standards used, and land use planning involved. He indicated the US mining industry has over 30 years’ experience in coal and non-coal closure activities. Some of this experience is good and some bad. Likewise, the experience has included changes in both regulation and closure activities.

Early modern closure began in the mid-1990’s. In some modern mine closures, the amount of bonding was inadequate causing a rapid response by regulators related to permits and bond amounts. In about 2004 this caused a “Grumpy Cat” syndrome of “You touch it, you own it” from regulators. Today’s mine design has become a “design for closure” effort from the beginning of mine planning.

Lessons learned by industry over this period 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/updated regularly.

On AML sites the factors involve landscape disturbance 70%, safety 20% and environmental issues 10-20%. Other issues discussed include hazardous underground openings, highwall issues, open pits, acid rock drainage (ARD), and leaching.

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

The objective in closure is you must meet defined water quality standards, improve environmental conditions, stabilize the site, improve the safety of site, and preserve historic structures on the site.

**DISCUSSION FOR GOOD SAMARITAN INITIATIVE**

*Erin Chancellor - Counsel to Administrator, U.S. Environmental Protection Agency; Former Texas Commissioner of Environmental Quality*

Ms. 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 Ms. Chancellor stated that the current EPA supports making progress on all AML site cleanup issues. moving the whole AML issue along. Administrative tools available under the 2007 EPA Guidance Document and 2012 memo include comfort letters (which take considerable time) and, CERCLA liability statement agreements (both of which are time consuming processes), covenants with DOI approval not to not sue with DOI approval, State voluntary cleanups, and looking at opportunities to improve water quality at sites (“don’t let perfect be the enemy of good”)., and water quality on a case-by-case situation. 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”.

Ms. Chancellor 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.

2.3 AFTERNOON SESSION – BREAKOUT DISCUSSIONS

**Session Moderator**

Ann Carpenter

**Session Objective**

Build Consensus on Best Paths Forward.

Delegates broke into nine working groups to build consensus on the critical language and programmatic components needed to advance Good Samaritan legislation focused on pilot/demonstration projects. Avenues for partnership, the ideal process for selection of candidate demonstration sites, and other issues raised by the morning sessions were also discussed.

Following is a summary of statements made during the breakout sessions. The participants were divided to facilitate cross-fertilization of ideas amongst the diverse stakeholders present (Figure 1, Appendix C).

The participants were asked to answer two questions:

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

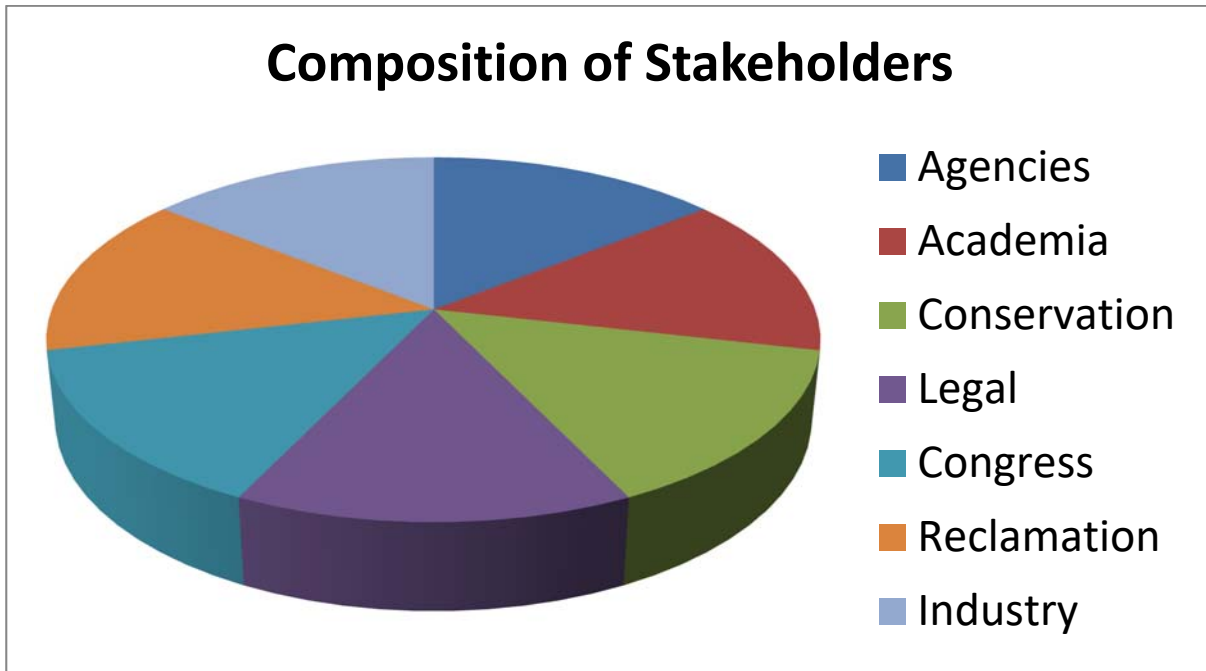


Figure 3: Participating Stakeholders by Affiliation Only. Not Representative of Numbers of Participants

The delegation reconvened in the late afternoon to share their results. As each group presented their responses to the two questions posed, the ideas were entered into a “live spreadsheet” displayed on the projector for the audience to review and correct as needed.

Each idea presented was subsequently assigned to one of sixteen themes or topical categories. Next, the common themes were ranked by frequency, except for the category “Other” which is listed last to capture all remaining ideas and concepts not reflected by the other fifteen themes.

Finally, in each category, a line was created for each unique concept discussed in that topical category. Ideas that were most similar in concept and intent were grouped as shown in the worksheet that accompanies the summit documents available on the MMSA Summit Web site. The original work product and phrasing submitted by each group is documented on the respective tabs within that worksheet.

Generally speaking, categories with fewer rows listed in Table 1 suggest a greater convergence of thought. In contrast, categories with more rows of information suggest a greater richness of discussion took place that identified important nuances within those respective topical categories. Each idea was subsequently grouped into the following common themes that emerged from the nine breakout discussions:

- ◆ **Cleanup standards/evaluation criteria** – All nine breakout groups broached the issue of evaluating what “success” should look like for AML-cleanup projects.
- ◆ **Approval process/timeline** – Seven groups made suggestions on how granting approvals to work on AML projects might look, and how the timeline of such might be improved to enable and incentivize more Good Samaritans to come forward.
- ◆ **Liability Concerns** – Six groups raised concerns about the liability a prospective Good Samaritan faces under current environmental regulations.
- ◆ **Third Party Lawsuits** – Eight groups identified that providing a Good Samaritan with protection or exemption from Citizen Lawsuits was a necessary component of any potential legislation. One group suggested there should however be a provision that allows for lawsuits only in cases of “gross negligence or intentional acts of harm.”
- ◆ **Site Selection Criteria/Process** – Five groups made suggestions on how candidate sites for a pilot/demonstration project might be identified and selected.
- ◆ **Terminology** – Four groups discussed the importance of terminology used in project-focused Good Samaritan legislation. One group even suggested the “Good Samaritan” term be eliminated as a means to possibly shed some of the “baggage” that has accumulated with the numerous unsuccessful legislative attempts over the past two decades to address Abandoned Mine Land issues.
- ◆ **Financial Assurance** – Five breakout groups discussed financial assurances with suggestions ranging from eliminating any long-term bonding requirements that might impact the ability of some Good Samaritans to come forward to suggestions that financial assurances should be reasonable with clearly defined release mechanisms (not to exceed three years). Two alternatives were also proposed to provide some assurances to the agencies and public that

work, once initiated, could still be completed. These included the (1) consideration of a “Financial Worthiness Test” in lieu of bonding and (2) a requirement that before any work begins, Good Samaritans must place sufficient funds in an escrow account to cover the project which could be transferred to others to complete the agreed-upon tasks if problems arise.

- ◆ **Regulatory Authority** – Seven groups commented on where the regulatory authority should rest in regards to issuing or authorizing Good Samaritan permits.
- ◆ **Reprocessing** – Four groups touched upon reprocessing and remining of historic mine waste and tailings.
- ◆ **Eligibility for Liability Protections** – Four breakout groups discussed who should be eligible for liability protections.
- ◆ **Community/Stakeholder Involvement** – Three groups recognized that engagement with all stakeholders and communities impacted by a site must somehow be part of the permitting process.
- ◆ **Incentives** – Five groups discussed possible incentives that should be integrated into Good Samaritan legislation to encourage and enable more Good Samaritans to come forward. These included consideration of offsite mitigation credits as proposed by the Lamborn Bill, allowing for reprocessing to offset project costs, and fast-tracking permits.
- ◆ **Monitoring** – Several groups were in support of site monitoring for a short period (3-5 years, mentioned by a few) to ensure improvements were sustained
- ◆ **Site Characterization** – Mention in a few of the breakout groups for some level of site characterization so that improvements could be achieved, compared against, and monitored.
- ◆ **Funding** – Discussions around funding were ‘left in the parking lot’ for the purposes of this first AML Summit. General thoughts are that there is funding available from public, private and other sources to get improvements at AML sites.

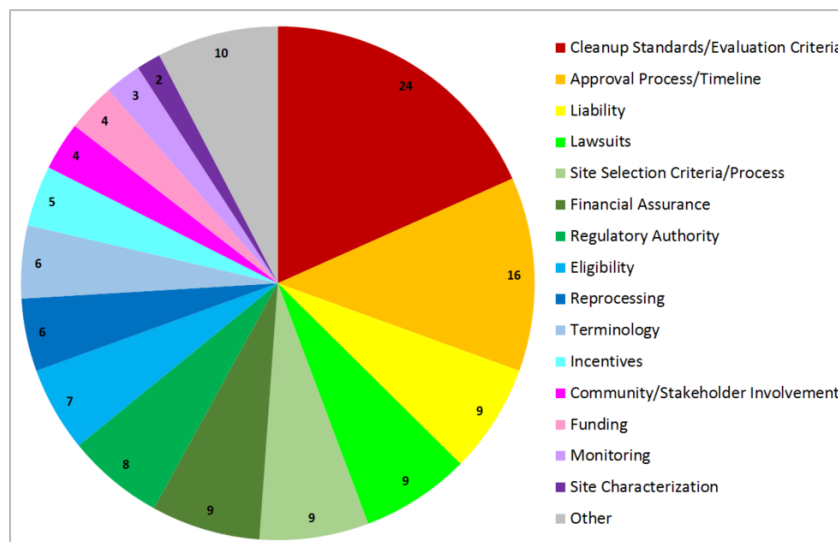


Figure 4: Common Themes/Issues

**Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup – Finding a Path Forward**

Summit Report

**TABLE 1 –Summary of Issues and Topics Discussed in the Breakout Groups**

<b>1.0 Cleanup Standards/Evaluation Criteria</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
1.1	No Net Harm/Do Not Harm/Do No Harm/No net degradation of water quality		•	•	•				•	
1.2	Site-specific standards/project-specific standards/Best Management Practices (BMPs) for each site	•			•	•			•	
1.3	Net benefit/net improvement/% improvement/improve water quality/"Better, not perfect"	•	•	•			•	•		•
1.4	No prescriptions/no prescriptive numeric standards/no prohibitive quantitative standards	•	•	•		•	•	•		
1.5	Allow qualitative standards (e.g., capping, biorecovery, re-established species)		•				•			
1.6	Good Samaritan has to be held to regulations (standards) in place when permit is issued to protect against future changes		•							
1.7	No post-closure care and maintenance			•						
<b>2.0 Approval Process/Timeline</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
2.1	Simple/streamlined/accelerated process	•			•					
2.2	Permitting program that has an exit strategy/Expiration date of permit		•							
2.3	The permitting program needs a timeline in which it has to be processed (VCUP is great but approval takes too long).		•							
2.4	Provision that application requirements are commensurate with the level of project. Keep flexibility		•							
2.5	45-day public comment period		•							
2.6	Single-tiered permit approval		•							
2.7	Protection from unreasonable approval delay (approvals should occur within 180 days)		•							
2.8	Time dependent approval depending on project size (time constraints on approval process, scalability)			•						
2.9	Closure plan that is noticed to public with a timely/appropriate comment period					•				
2.10	Protection of approval process from judicial review to avoid delay					•				
2.11	Want AOC process more streamlined, less emphasis on "comfort letters" that aren't comforting to anyone								•	
2.12	"Baby" Engineering Evaluation Cost Analysis (EECA) process								•	
2.13	Notification process for agencies								•	
2.14	Ability to transfer permits (or "authorization") to new operators if needed									•
2.15	No ambiguous process/timeline					•				
<b>3.0 Liability Concerns</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
3.1	Liability relief for Good Samaritan	•	•	•		•		•		
3.2	Liability remains if actions degrade site	•								
3.3	Get rid of joint/several liability			•						
3.4	Liability protection must be in perpetuity/No perpetual liability		•		•					



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<b>4.0 Lawsuits</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
4.1	Protection/Exemption from Citizen Lawsuits	•	•	•	•	•	•		•	•
4.2	Provision would allow for lawsuits only in cases of gross negligence or intentional acts of harm	•								
<b>5.0 Site Selection Criteria/Process</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
5.1	States will have primacy to select site/projects	•								
5.2	Sites/projects must not have a viable identified PRP	•								
5.3	Cap on pilot project should not exceed \$2M so as to ensure we are staying within concept of a "pilot"		•							
5.4	Clear indication that pilots are point source specific		•							
5.5	Should focus on pilot - scope should stay narrow					•				
5.6	Define scale of project requirements (cost, size, impact)					•				
5.7	Want ability to address the entire site							•		
5.8	Pilot should include at least one point-source H2O not requiring long-term treatment so we can demonstrate it can be done								•	
5.9	Have each western state/tribe nominate a site to put into pilot program. We would require county/local support of site.									•
<b>6.0 Financial assurance</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
6.1	Reasonable Financial Assurance			•	•	•				
6.2	Release period and defined release mechanism (not to exceed 3 years)			•						
6.3	Financial assurance should be determined by the state and require operation and maintenance plan.				•					
6.4	Put money required to complete project in escrow account upfront so others can finish if problems arise (substitute for bond).									•
6.5	No Long Term Bonding/No Financial Assurance		•	•						
6.6	Proposed Financial Verification or "Financial Worthiness" test as a form of security instead of formal bonding		•							
<b>7.0 Regulatory Authority</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
7.1	State Primacy/Allow for Delegation to States	•	•		•	•	•			•
7.2	Project approval by 'lead agency'/Single regulatory agency for Federal AML Site					•		•		
<b>8.0 Eligibility for Liability Protections</b>		<b>G1</b>	<b>G2</b>	<b>G3/6</b>	<b>G4</b>	<b>G5</b>	<b>G7</b>	<b>G8</b>	<b>G9</b>	<b>G10</b>
8.1	Eligibility of operator			•						
8.2	Contractors performing work						•			
8.3	States, Federal Agencies, Tribes				•					•
8.4	Private Landowners				•					
8.5	Those Who Write Checks									•
8.6	"Entire universe" of participants involved in the site should be protected									•

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		G1	G2	G3/6	G4	G5	G7	G8	G9	G10
<b>9.0</b>	<b>Reprocessing</b>									
9.1	Reprocessing AML Waste without restrictions or criteria on what happens to proceeds	•								
9.2	Ability/option to reprocess waste from old sites (would require additional/appropriate permitting)		•							
9.3	No "on-site" processing and disposal of material/residues - Good Sam assumes liability once material taken off site				•					
9.4	If Good Sam wants to do "on-site" processing/remining, it should go through normal permit process and assume liability instead.				•					
9.5	Reprocessing (critical/strategic minerals)					•				
9.6	Provide reprocess incentives (e.g. reprocessing projects could be eligible for fast-tracking of permits)							•		
<b>10.0</b>	<b>Terminology</b>									
10.1	CHANGE THE NAME (drop "Good Sam" term)! AML Reclamation Partnership Act (ARPA).	•								
10.2	Agreement NOT permit	•								
10.3	Regulatory authority approved "authorization"			•						
10.4	"Authorization" instead of "permit"					•				
10.5	Maybe rethink word Abandoned...maybe "Orphaned"					•				
10.6	Need to define abandoned mine --> Pre-surface mining regs, no identified PRP. Judgement proof - innocent landowner									•
<b>11.0</b>	<b>Incentives</b>									
11.1	Incentives for partners to participate, (partners determined on a site by site basis)	•								
11.2	Incentives such as mitigation banking (companies, contractors and conservation groups can participate)						•			
11.3	Provide cost incentives OR limited liability - if habitat restored, good Sam can get mitigation banking credit							•		
11.4	Provide reprocess incentives (e.g. reprocessing projects could be eligible for fast-tracking of permits)							•		
11.5	Language similar to Lamborn Bill that allowed for offsite mitigation credit									•
<b>12.0</b>	<b>Community/Stakeholder Involvement</b>									
12.1	Community involvement	•								
12.2	Stakeholder involvement (all)			•						
12.3	Encourage multi-stakeholder process through an external Foundation						•			
12.4	Establish stakeholder groups (e.g., CWA 208 watershed groups that are empowered to make calls on behalf of impacted watersheds)						•			

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<b>13.0 Funding</b>		G1	G2	G3/6	G4	G5	G7	G8	G9	G10
13.1	Nevada Trust Fund model (which uses permit fees to address safety issues of AML sites)						•			
13.2	Matching funds from States						•			
13.3	NPS and FWS and USFS have foundations, BLM is setting up theirs now.									•
13.4	Encourage multi-stakeholder process through an external Foundation						•			
<b>14.0 Monitoring</b>		G1	G2	G3/6	G4	G5	G7	G8	G9	G10
14.1	Applicant would define time to complete the project and what would be done for monitoring in the permit application		•					•		
14.2	To address uncertainty, allow for post-completion monitoring							•		
14.3	No perpetual monitoring requirements		•							
<b>15.0 Site Characterization</b>		G1	G2	G3/6	G4	G5	G7	G8	G9	G10
15.1	Site-specific characterization of current condition (NOT full scale baseline)			•						
15.2	Approval of site characterization					•				
<b>16.0 Other Ideas and Questions</b>		G1	G2	G3/6	G4	G5	G7	G8	G9	G10
16.1	"Failure to comply" provision		•							
16.2	No civil penalties		•							
16.3	Cannot override extractive requirements			•						
16.4	Sunset the legislation over a certain period so it can be revised or eliminated if it does not work						•			
16.5	Technical advisory group (academia, QPs)						•			
16.6	AMLs as of document date							•		
16.7	If available, tie to existing legislation							•		
16.8	Must address trust issues. Folks struggle with each party not trusting the others (agency, industry and NGO)								•	
16.9	Avoid any language/reference to NEPA process				•					
16.10	No open-ended obligations					•				