



John L. Watson

The Colorado Good Samaritan Act of 2020

***Typical Good Samaritan Laws –
The Focus is Protection From
Civil Liability for Helping in an Emergency***

Example - Virginia Law Protects Good Samaritans

- The law protects people who stop to help because it encourages people to help each other during an emergency.
- If the law provided no protection for those who did try to help others in emergency situations, then far fewer people would.

Virginia's Law

- The Virginia Good Samaritan Law, Va. Code § 8.01-225, generally protects those who try to [help accident victims](#).
 - **How Does Virginia's Good Samaritan Law Work?**
- Under [Virginia law](#), anyone who renders emergency aid to someone who is at risk of serious harm or death is immune from civil liability for injuries or death of that person.
- However, several conditions must exist in order for a person to receive this protection.
- The law shields a person from liability who acts reasonably to help someone in need at the scene of a wreck.

All 50 States Have Some Version

- All 50 states and the District of Columbia have some type of Good Samaritan law. The details of good Samaritan laws/acts vary by jurisdiction, including who is protected from liability and under what circumstances.
- The laws include all 50 states:
- <https://recreation-law.com/2014/05/28/good-samaritan-laws-by-state/>

Colorado

- **C.R.S. Section 13-21-108.**
 - **Persons rendering emergency assistance exempt from civil liability**

Colorado

- (1) Any person *licensed as a physician and surgeon* under the laws of the state of Colorado, or *any other person, who in good faith renders emergency care or emergency assistance* to a person not presently his patient without compensation at the place of an emergency or accident, including a health care institution as defined in [section 13-64-202 \(3\)](#), *shall not be liable for any civil damages for acts or omissions made in good faith* as a result of the rendering of such emergency care or emergency assistance during the emergency,
- *Unless the acts or omissions were grossly negligent or willful and wanton.*

Colorado

- This section shall not apply to any person who renders such emergency care or emergency assistance to a patient he is *otherwise obligated to cover.*
 - *So, does this section apply to women?*
 - *Claro*
 - *Ciertamente*
 - *Si*
 - *Of course, amigos*

Colorado

- (2) Any person while acting as a *volunteer member of a rescue unit*, as defined in section 25-3.5-103 (11), C.R.S., notwithstanding the fact that such organization may recover actual costs incurred in the rendering of emergency care or assistance to a person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident *shall not be liable for any civil damages for acts or omissions in good faith.*

Colorado

- (3) Any person, including a *licensed physician, surgeon, or other medical personnel*, while *acting as a volunteer member of a ski patrol or ski area rescue unit*, notwithstanding the fact that such person may receive free skiing privileges or other benefits as a result of his volunteer status, who in good faith renders emergency care or assistance without other compensation at the place of an emergency or accident *shall not be liable for any civil damages for acts or omissions in good faith*.

Colorado

- (5) An *employer shall not be liable for any civil damages for acts or omissions made by an employee* while rendering emergency care or emergency assistance if the employee:
 - (a) Renders the emergency care or emergency assistance in the course of his or her employment for the employer; and
 - (b) *Is personally exempt from liability for civil damages for the acts or omissions* under subsection (1) of this section.

So, That Sets The Stage

- If you're being a good person
- Trying to help out
- And didn't cause the problem
- Or were already responsible, somehow,
- A Good Sam (or Samantha)
- **Should NOT have to worry about being liable**
- For voluntarily helping to fix the problem.

And What's the Problem?

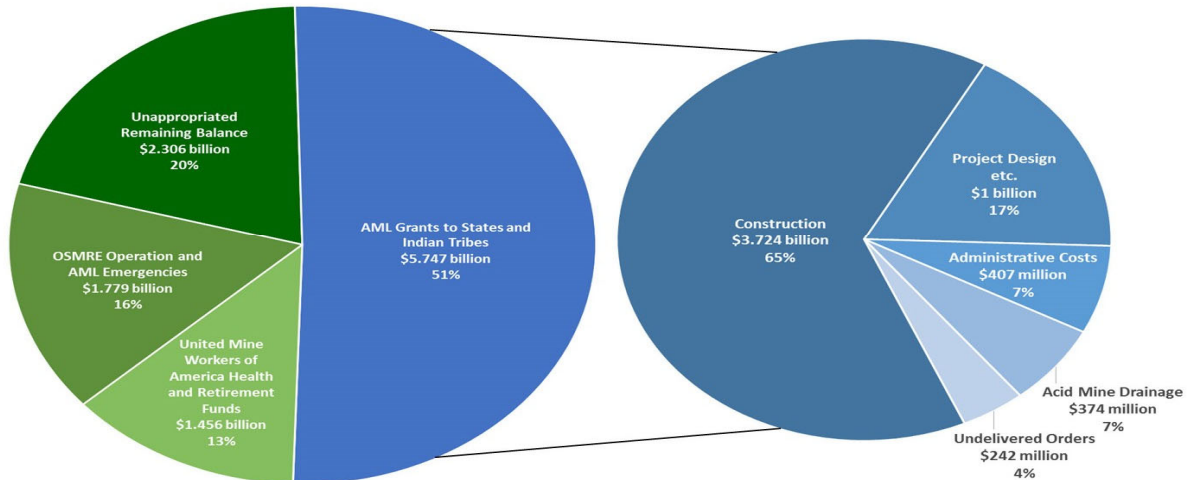
- ***Wherever you have mineral development***
- ***You'll have abandoned mines, oil wells, and operations***



For Some Problems

Lots and Lots of Money

**Abandoned Mine Land (AML) Reclamation Fund
FY 1977 – FY 2018
Total \$11.288 Billion as of September 30, 2018**



Data Sources: OSMRE's DOI Financial Business Management System (FBMS) is the system of record for the AML Program that contains comprehensive information on AML grant allocations and expenditures. The enhanced Abandoned Mine Land Inventory System (eAMLIS) only accounts for direct construction costs to reclaim each AML problem.

But Not For These Problems







And the Big One – The Gold King Animas River Spill

- ***August 5, 2015.***
- Workers accidentally spilled a ***million gallons*** of mine waste into the Animas River.
 - The contaminants that dumped into the river,
 - At a rate of ***548 gallons per minute,***
 - Included ***arsenic, copper, zinc, lead, aluminum, and cadmium.***
- The Animas flows into the San Juan River in New Mexico
- And joins the Colorado River in Utah's portion of Lake Powell.



O.K. Enough of “Pretty” Pictures

The Colorado Facts

- Estimated **23,000** abandoned mine lands (AML) in Colorado
 - Source: Colorado Geological Survey
- The Colorado Geological Survey conducted an abandoned mine land (AML) inventory for the U.S. Forest Service on National Forest System lands in Colorado from 1991 through 1998.
 - The inventory identified physical and environmental hazards associated with mine features such as mine openings, waste rock dumps, tailings dumps, and mine structures.
- Approximately **18,000** individual mine features were inventoried!

The Colorado Good Samaritan Act of 2020 (The “CGSA”)

- Does not trump federal law.
 - *Clean Water Act, Clean Air Act, RCRA, Superfund would all still be alive and well in Colorado.*
- The proposed CGSA provides incentives for, and attempts to remove roadblocks
- To encourage and allow Good Samaritans to engage with others to reclaim abandoned sites.

PA’s Environmental Good Samaritan Act of 1999

- The Colorado proposed legislation is based on the Pennsylvania statute which was signed into law on December 15, 1999.
- Link to text of *Pennsylvania Environmental Good Samaritan Act*
- <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=27&div=0&chpt=81>

Brief Outline of the Colorado Proposal

The Act's Purpose

- The proposed statute would protect landowners, groups and individuals who volunteer for such projects from civil and environmental liability.
- Law is intended to encourage landowners and others to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mines, and oil and gas wells.
- The Colorado Department of Public Health and Environment and the Colorado Department of Natural Resources would review project proposals for protection under the Good Samaritan Act and will administer and review project proposals to determine project eligibility.

Who is eligible for protection under the Act?

- Any landowner who provides access to the land without charge or compensation for a reclamation or water pollution abatement project is eligible for protection under the Act.
- Additionally, any person, corporation, nonprofit organization or government entity that participates in a project is eligible for protection if they:

Who is eligible for protection under the Act?

- Provide equipment, materials or services for the project for no profit;
- Did not cause or create the abandoned mineral extraction land or water pollution;
- Were not ordered by the state or federal government to do the work;
- Are not performing the work under a contract for profit, such as a competitive bid project; and
- Are not the surety that issued the bond for the site.

What types of land reclamation projects are covered?

- Eligible projects are those that restore mineral extraction lands that have been abandoned or not completely reclaimed.
- This also includes areas where the mine operator has forfeited bonds on the site.
- Typical conditions that are suitable for land reclamation projects include features such as, but not limited to, abandoned mine pits and underground mine entrances, refuse piles, and unplugged oil and gas wells.
- Projects addressing areas where abandoned structures or equipment from past mineral extraction operations are located are also eligible.
- State agencies must approve each project and determine that the project will not cause water pollution.

What types of water pollution projects are covered under the Act?

- Eligible water pollution abatement projects are those that
 - *Treat or stop water pollution caused by abandoned mines or oil and gas wells.*
- Project proposals must be capable of *improving water quality* and must be approved by the agencies.

What protections are provided to landowners who allow their property to be used for a water pollution abatement or land reclamation project?

- Landowners who provide access to the project area are not responsible for:
- Injury or damage to a person who is restoring the land or treating the water pollution while the person is on the project area;
- Injury or damage to a person that is caused by the people restoring the land or treating the water pollution;

What protections are provided to landowners who allow their property to be used for a water pollution abatement or land reclamation project?

- Injury or damage to a person as a result of the project;
- Any pollution that may be caused by the project; or
- The operation, maintenance or repair of any water pollution treatment equipment constructed on the land,
 - unless the landowner damages or destroys the water pollution treatment equipment or refuses to allow the equipment to be operated or repaired.

Are there exceptions to the protections provided to landowners under the Act?

- Landowners will **not** be protected from liability if they:
 - Deliberately or recklessly cause injury or property damage;
 - Charge a fee or receive some other form of compensation for access to the land;
 - Violate the law; **or**
 - Fail to warn those who are working on the project about any dangerous conditions of which they are aware within the project work area.

Are there exceptions to the protections provided to landowners under the Act?

- In addition, landowners will **not** be protected under the Act if the project damages adjacent or downstream landowners, **and**
- Those individuals had **not** received written or public notice of the proposed project.
 - This notice is given while the agencies are reviewing the proposed project.

What protections are available to individuals who participate in a land reclamation or water treatment project?

- Participants in a land reclamation or water pollution abatement project are **not** responsible for:
 - Injury or damage that occurs during the work on the project;
 - Any pollution coming from the water treatment facilities; or
 - Operating, maintaining or repairing the water treatment facilities.

Are there any exceptions to the protections provided to a participant in a land reclamation or water treatment project?

- Participants will **not** be protected from liability if they:
 - Cause increased pollution by activities that are unrelated to work on the approved project;
 - Deliberately or recklessly cause injury or property damage; or
 - Violate the law.

Are there any exceptions to the protections provided to a participant in a land reclamation or water treatment project?

- Additionally, participants are not protected under the Act if the project damages adjacent or downstream landowners, and
- Written or public notice of the proposed project was not provided.
 - This notice is given while agencies are reviewing the proposed project.

The Act Does **NOT** Trump Federal Law

- The Good Samaritan Act provides protection under state law only and does not apply to federal law.
- While Colorado agencies determine project eligibility under the Act, the agencies do not have the authority to make legal rulings on who receives protections from liability.
 - Who decides that issue?
 - Judge in a court of law.
- If a landowner or participant in a project is sued for injury or damage,
 - They should use the agencies' approval of the project and record of participation by landowners and others in their defense.

How does anyone get protection under the Act?

- Only projects ***approved by the Colorado agencies*** are eligible for protections under the Good Samaritan Act.
 - The agencies will develop a ***project proposal form*** for participants and landowners.
- Each proposal must
 - Identify the project participants and landowners,
 - Describe the location of the project and the environmental problems that will be addressed, and
 - Establish a work plan for the proposed project for agency approval.

How does anyone get protection under the Act?

- The agencies will evaluate each proposal and determine if the project is capable of reclaiming the land or improving water quality.
- The agencies will also advise participants on any ***permits*** that may be needed.
- Once the project is approved, the agencies will maintain a permanent record of the participants and landowners who are protected under the Good Samaritan Act.

Always Start and End with Visuals



Mine Reclamation



Before

After



Eagle Mine, Colorado



In 1993



After reclamation, 1999



The Colorado Good Samaritan Act of 2020

John L. Watson

Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

303.592.8339

jwatson@spencerfane.com

www.spencerfane.com

<p>SILVERTON INNOVATION EXPO</p> 	 <p>SAN JUAN MINING & RECLAMATION CONFERENCE</p>
<p>CHANGING APPROACHES</p> 	