



March 28, 2019

Testimony of Trout Unlimited on the House Natural Resource Committee’s Subcommittee on Energy and Mineral Resource Subcommittee Hearing on Abandoned Mine Land Reclamation: Innovative Approaches and Economic Development Opportunities.

Chairman Lowenthal, Ranking Member Gosar, and Subcommittee Members:

My name is Chris Wood. I am the President and CEO of Trout Unlimited. Thank you for the opportunity to testify today on the abandoned coal mine cleanup work that we and our partners are accomplishing throughout coal country.

I offer the following testimony on behalf of Trout Unlimited and its nearly 300,000 members and supporters nationwide. My testimony will focus on the pressing need for cleanup work in coal country, our innovative work and the economic benefits it provides local communities, the need to facilitate abandoned coal mine cleanups by Community Reclaimers (also often known as “Good Samaritans”), and the need to continue to provide funding through the Abandoned Mine Land (AML) reauthorization which propels the work forward.

We deeply appreciate the Subcommittee’s early focus on this issue, and we urge the Subcommittee to continue to work with us, the states, the Interior Department, and other stakeholders to develop and pass the bills needed to provide the tools and funding to facilitate cleanups. The Subcommittee showed such leadership in 2017 with the passage of Representative LaHood’s HR 2937, the Community Reclamation Partnership Bill, through the House.

TU’s mission is to conserve, protect and restore North America’s trout and salmon fisheries and the watersheds upon which they depend. In pursuit of this mission, TU has worked to restore streams and rivers damaged by pollution from abandoned mines from the Appalachian coalfields in Pennsylvania to the hardrock mining areas of the Rocky Mountain states. TU stands ready to expand our work to clean up abandoned mine pollution.

Abandoned mine pollution is a widespread problem but much of it is fixable.

Americans want clean water. Citizens of coal country want their polluted waters cleaned up. Trout Unlimited members give substantial amounts of their time and treasure to protecting and restoring trout watersheds, including abatement of abandoned mine pollution. But even a cursory look at the damages to our streams, rivers and groundwater caused by pollution from abandoned coal and hardrock mines show that we have a long way to go to achieve clean water for all. There is no better time than right now, as Congress and the Administration focus on infrastructure improvements, to view abandoned mine clean up as a great example of jobs- producing, watershed-enhancing, natural infrastructure initiative.

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Sadly, much of abandoned mine pollution is “out of sight, out of mind.” In August 2015, we received a vivid view of the mess. The three-million gallons spill of polluted water from the Gold King mine near Silverton, Colorado showed the world what TU members and staff who live in mining country see every day: Orange, polluted water leaking out from abandoned mines. In Pennsylvania alone, over 2.5 million people live within one mile of an abandoned coal mine. To these people who see the orange, polluted, dead streams that flow from the mines are nothing new or shocking. Dozens of volunteer organizations and individual citizens – so called Good Samaritans – spend countless hours of their own time to work on cleaning up abandoned mine drainage.

Cleaning up abandoned mines is challenging and expensive. That does not make it any less important. The legacy of historic mining has left us with thousands of abandoned coal mines that have persisted for the better part of a century with insufficient progress toward a solution. Just as my fellow citizens of Washington D.C. and surrounding counties expect and deserve the right to clean drinking water and healthy streams and rivers in their neighborhoods, the citizens of coal country should expect and deserve the same. Although only hundreds of miles separate these places, water quality is worlds apart.

Abandoned coal mines dot the Appalachian landscape. Pollution from abandoned coal mines continues to damage thousands of miles of streams and rivers; there are over 10,000 miles just within Pennsylvania and West Virginia. While much has been accomplished through the Surface Mining Control and Reclamation Act’s (SMCRA) extremely valuable AML program, a great deal more remains to be done. In Pennsylvania alone, more than 178,000 acres of mine lands await cleanup, and more than 5,600 miles of waterways are polluted by abandoned mine drainage. The cost of cleanup has been estimated as high as \$15 billion.¹ This estimated cleanup cost has stayed relatively stable because, as new mine subsidences occur and new development occurs in formerly rural areas, new problems are constantly arising and being added to Pennsylvania’s AML inventory as quickly as they are being addressed.

A reclamation fee, paid by the mining companies, is collected for each ton of coal produced to support the AML Fund. Since 1977, more than \$10.5 billion has been put to good use making safe and cleaning up abandoned coal mines.

We have developed several model projects that can be easily replicated. In Pennsylvania, aided by state-based Good Samaritan policy, watershed groups, including Trout Unlimited, are working with state agencies, communities, and other partners to conduct more than 250 abandoned coal mine pollution projects throughout the state. We and our partners can do a lot more if the AML Fund is reauthorized and the Good Samaritan problem is addressed.

¹ <http://pa.water.usgs.gov/projects/energy/amd/>

Our best environmental law, the Clean Water Act, can be a barrier to abandoned coal mine cleanup

There are many projects where water quality could be improved by collecting run-off, or taking an existing discrete discharge, and running the polluted water through a treatment system. However, for would-be Community Reclaimers, Clean Water Act (CWA) compliance and liability issues remain a barrier to such projects. Several courts have held that discharges from systems that treat wastewater from abandoned mines are point source discharges that require a National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the CWA. Although EPA and some eastern states have not considered such projects to be point sources requiring NPDES permits, the Fourth Circuit's 2010 decision in *West Virginia Highlands Conservancy, Inc. v. Huffman* creates some uncertainty around that approach.

Stakeholders in projects involving treatment of mine drainage have been held back because of CWA liability for two reasons. First, NGOs, including TU, are not well suited to apply for and hold permits for such projects. TU, for example, does not have an adequate funding mechanism to legally bind itself to pay for the perpetual costs associated with operating a water-treatment facility and permit compliance.

Second, for many projects it may be impossible to obtain a permit, because the treatment systems, even if they will improve conditions, may not be able to treat abandoned mine wastewater to a level that meets all applicable water quality standards or other applicable criteria. It should be noted that while these treatment systems are certainly capable of producing water that will support a healthy fishery, the resulting water quality might not meet CWA standards for some pollutants that are particularly difficult to remove from mine waste (for example, passive wetland systems that effectively treat highly polluted water often leave levels of manganese that do not comply with CWA standards).

This is not to say that CWA standards should be weakened; just the opposite, in fact. But there should be incentives for would-be Community Reclaimers who have had no historic or legal interest in the abandoned mines to make water cleaner even if still short of full CWA standards. Put another way, federal law should provide incentives for would-be Good Samaritans to make our water cleaner and communities safer.

Good projects could be expanded and replicated with effective Good Samaritan policy for coal

In Pennsylvania, as we explain below, polluted water is being successfully treated and streams and rivers are being brought back to life because the Commonwealth has provided Good Samaritans with dedicated funding. We and our partners believe that we can export the Pennsylvania model across the rest of the country if liability concerns are eased and funding is available.

Our experiences in Pennsylvania are illustrative of the positive effect of Good Samaritan cleanups. Over the past 20 years, Pennsylvania has seen an increase in abandoned mine reclamation projects by watershed groups, including TU. This boom has been fueled by funding from the state's Growing Greener grant program and the federal AML reclamation fund. Most of these projects involve treatment of acid mine drainage using passive treatment systems, which run the polluted mine

drainage through a series of limestone basins and wetlands that increase the water's pH and cause heavy metals to precipitate out. These projects have significantly improved water quality and restored fish populations in numerous Pennsylvania streams.

In 2002, a college intern named Rachel Kester spent a dispiriting summer assessing streams decimated by abandoned mine drainage in northcentral Pennsylvania. But among these polluted waters, one caught her attention—Potts Run, where a small but hardy population of stream bugs had managed to hang on. A decade later, Rachel took a job at Trout Unlimited and bought a house a mile away from the stream. It's taken nearly two decades of study and planning, but this year, she is leading a cleanup on Potts Run that will bring wild brook trout back to this stretch of water. This story was made possible by a \$1.2 million grant from the federal AML Pilot program.

The Pennsylvania Department of Environmental Protection estimates that public funding sources have paid for the construction of nearly 250 passive treatment systems in the state, the majority of which have been constructed by private watershed groups, conservation districts or other local groups.

Beginning in 1998, the work of TU and its partners in the lower Kettle Creek watershed has resulted in the reclamation of approximately 160 acres of scarred abandoned mine lands and installation of nine treatment systems that successfully improved mine water polluted with high levels of acidity and metals. The results to date have been tremendous, with water quality restored to 3 miles of previously dead streams and 6 miles of a fully reconnected and thriving native brook trout population.

TU's Chestnut Ridge Chapter and other partners have worked for more than two decades to improve water quality in the Dunbar Creek watershed in southwest Pennsylvania. On Glade Run, the chapter installed a treatment system and applied alkaline sand to address AMD that had left the stream devoid of fish. Water quality has now improved enough that wild trout reintroduced into the lower section of Glade Run are now thriving, and the state has proposed removing 1.2 miles of this stream from the Commonwealth's list of impaired streams.

This story of recovery plays out again and again in individual streams and watersheds. Several years ago, the Babb Creek Watershed Association accomplished delisting 14 miles of Babb Creek, now a wild trout fishery, from EPA's impaired streams list. Another 14 miles in the Tangascootack Creek watershed is pending removal from the impaired streams list as a result of passive treatment systems constructed by the Clinton County Conservation District.

On a much larger scale, the West Branch Susquehanna River watershed has made tremendous strides over the past few decades. A comparison of conditions in the West Branch Susquehanna in 1972 with those in 2009 indicated that fish species increased 3,000 percent, and pH increased from 3.8 to 6.6. Preliminary results from our 2017-2018 re-evaluation of water quality and biological conditions across the historically impaired West Branch Susquehanna River basin demonstrate continued improvements in water quality and wild trout populations. Ten sites that exceeded water quality standards in the 2009 study were found to now be meeting water quality standards. This is clear testament to the success of collaborative abandoned mine cleanup that continues across this vast landscape in Pennsylvania.

On Fall Brook in Pennsylvania we helped Tioga County Concerned Citizens Committee and Tioga County Conservation District with a conceptual treatment plan that they then took to Southwestern Energy. Southwestern decided to fully fund the construction and the long-term operation and maintenance trust fund (\$2.7 million). Southwestern Energy uses the project to fulfill their water-neutral program (for every gallon of water they use in natural gas development, they clean up the same amount of polluted water).

These improvements result in economic benefits. In Pennsylvania, almost \$4 billion was spent on fishing, hunting, and wildlife viewing in 2006. A 2008 study found that full remediation of the West Branch Susquehanna River watershed would result in “an additional \$22.3 million in sport fishing revenues could be expected to be generated each year. Additional recreation spending—over and above that for fishing—would be expected after remediation is completed.”^[1]

Regardless of the overall scope of the abandoned mine problem, each of these projects restored a significant water body and represents a big win for the local community.

Community Reclaimers legislation is needed to increase cleanup work in coal country.

Earlier this year Representative LaHood reintroduced his Community Reclamation Partnerships bill. We urge the Subcommittee to mark up the bill and pass it in the coming months.

One aspect of the bill that needs some attention is to ensure that ongoing, well-functioning projects should not have to go through the bill’s approval process if the states certify that the existing projects are being implemented effectively and are improving water quality as planned. As we mentioned, some 250 projects are currently functioning well in Pennsylvania, and thus they should be smoothly embedded in the new program with minimal additional review.

Reauthorizing the AML Fund should be a priority for the Subcommittee.

Reauthorization of the Abandoned Mine Reclamation Fund Fee is one of the most important tasks on the Subcommittee’s agenda. The program is important to protect our communities and families from hazards posed by coal mines abandoned before 1977. In addition to all the water quality improvement work cited above, the program funds a host of other critically important tasks, including elimination of dangerous shafts and other physical hazards, extinguishing mine fires, and mitigating mountains of coal waste. The Abandoned Mine Reclamation Fund is the primary source of money available to states, tribes and their NGO partners to fix these problems.

To repeat a point that cannot be repeated enough, there is much more work to do. According to the Interstate Mining Compact Commission (IMCC) and the Office of Surface Mining Reclamation and Enforcement (OSMRE), at least 15 years and billions of dollars’ worth of reclamation and remediation is ahead of us.

It is imperative that Congress reauthorize the Abandoned Mine Reclamation Fund before it expires in 2021 and make several improvements to SMCRA to ensure that there is enough federal funding available to finish this important work.

We urge you not to delay working with your colleagues on reauthorization legislation. As Congress found in the years preceding reauthorization in 2006, abandoned mine funding is a complex issue that requires time and energy to resolve. Given the scope of the problem in coal country, we urge you to see that funding does not expire before the damage from historic coal mining can be fully addressed. Please see the attached position paper for more detailed information about our reauthorization requests.

In short, the \$5.5 billion invested in state and tribal AML programs over the decades has translated into significant on-the-ground gains: 875,000 acres of high-priority sites reclaimed, 46,000 open mine shafts and portals sealed, 29,000 acres of piles and embankments removed. More than \$600 million has been spent to treat mine drainage and reduce pollution to streams, rivers, and drinking water supplies. For every dollar invested, \$1.59 was returned to local economies. With reauthorization we can ensure that this record of progress continues.

Conclusion

Improving water quality around the Nation is a fundamental goal of the work of this Subcommittee, and thus we are pleased that the Subcommittee is looking at one of the most vexing water problems remaining in coal country.

Clean up of abandoned coal mine pollution is a long-term job, and two major factors need to be addressed: 1.) long term funding, via AML reauthorization, and 2.) a Community Reclamation partnerships bill to aid Good Samaritan cleanup, are needed to get the job done. The AML fund is the lifeblood of funding for abandoned coal mine work in the coalfield areas of America, especially the East. Trout Unlimited and other stakeholders urge Congress to get started on the task of reauthorization now to ensure a smooth reauthorization is achieved by 2021. Such a valuable, complex law is worth the effort needed to make sure the critical funding is maintained.

We stand ready to work with you so that affected communities around the Nation will again have clean, fishable waters. Thank you for considering our views and thank you for working with us on these important matters.