



May 24, 2017

**Testimony of Trout Unlimited on the House Natural Resource Committee's Subcommittee on Energy and Mineral Resource Subcommittee hearing on: Discussion Draft of the *Community Reclamation Partnerships Act of 2017*.**

Chairman Gosar, Ranking Member Lowenthal, 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 abandoned coal mine clean up legislation.

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 Discussion Draft (Draft Bill), cleanup of abandoned coal mine lands and water, and specifically the need to facilitate abandoned coal mine cleanups by Community Reclaimers (also often known as "Good Samaritans") — those individuals or entities who have no legal obligation to take on an abandoned mine cleanup, but who wish to do so in order to improve water quality and watershed health.

We deeply appreciate the Subcommittee's focus on this issue, and we urge the Subcommittee to continue to work with us, the states, the Interior Department, the EPA, and other stakeholders on such a bill to help provide an important tool to facilitate cleanups.

TU's mission is to conserve, protect and restore North America's trout and salmon fisheries and the watersheds they depend on. 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, and my testimony is based upon these experiences. TU stands ready to expand our work to clean up abandoned mine pollution, and we need such legislation to make it happen.

We are grateful for the Draft Bill, and the leadership of its authors, Representative LaHood and Chairman Gosar. It is a thoughtful approach and a workable, new model. We appreciate the willingness of the authors to allow for ample discussion of the draft. We hope that the deliberations will lead to strong, bipartisan support for the bill.

There is room for improvement in some areas, but we regard the draft as a significant step that is headed in the right direction. It must work well on the ground, of course, and as our field practitioners are studying the Draft Bill, we will offer additional feedback in the coming days. We are confident that the finished, introduced bill will be worthy of the Subcommittee's strong consideration and eventual approval.

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

Americans want clean water. Trout Unlimited members give substantial amounts of their time and treasures to protecting and restoring trout watersheds. 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 the new Trump Administration and the 115<sup>th</sup> Congress discuss including water clean up work as part of an infrastructure package, to address clean up of pollution from abandoned coal mine.

Sadly, much of abandoned mine pollution is “out of sight, out of mind”. But 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.

Cleaning up abandoned mines is challenging and expensive. That does not make it any less imperative. The legacy of historical mining practices — thousands of abandoned coal and hardrock mines with an estimated cleanup cost in the billions of dollars — has persisted for the better part of a century with insufficient progress toward a solution.

Abandoned coal mines dot the Appalachian landscape. Pollution from abandoned coal mines continues to damage thousands of miles of streams and rivers — over 10,000 miles just within Pennsylvania and West Virginia — and while much has been accomplished through the Surface Mining Control and Reclamation Act’s (SMCRA) extremely valuable Abandoned Mine Lands Fund (AML Fund), a great deal more remains to be done. The cost of cleanup in Pennsylvania alone has been estimated as high as \$15 billion.<sup>1</sup>

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 a number of 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 can do lot more if the problem is fixed.

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<sup>1</sup> <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 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 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 believe that we can export the Pennsylvania model across the rest of the country if liability concerns are eased.

Kettle Creek, Pennsylvania. 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 Abandoned Mine Land (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.

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.

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.

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."<sup>[1]</sup>

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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.

## **Assessment of the Draft Bill**

### **1. Positive Features of the Draft Bill**

- Houses the program within SMCRA and the existing AML clean up program. This will ensure that many of the positive features of current AML programs will be retained.
- The Clean Water Act liability protection mechanism for Community Reclaimers is narrowly tailored, is located within SMCRA, and relies on our state partners.
- Allows eligible states to enter into abandoned mine pollution clean up MOUs with Interior through the current AML program, to be approved by Interior and EPA, to ensure that water pollution clean up results in a significant improvement to the environment.

### **2. Sections of the Draft where clarifications or improvements should be considered**

- The bill should ensure that ongoing, well functioning projects should not have to go through the bill's approval process if the states, through the MOU mechanism, 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.
- The bill language should clarify that adequate public notice and comment is available for the draft MOUs from each state, and for each project.
- The bill should clarify that private landowners who are not responsible for abandoned mine clean up on their lands, but who are willing to work cooperatively with the Community Reclaimer and the state to clean up pollution from abandoned mines on their land, should also receive liability protection from the bill over the life of the project.

Clean up of abandoned coal mine pollution is a long term job, and long term funding is needed to get the job done. Thus, Congress needs to start work on reauthorizing Title IV AML for coal. The AML fund is the lifeblood of funding for abandoned coal mine work in the coalfield areas of America, especially the East. Congress passed a very useful 15-year reauthorization for the

AML fund in 2006. 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.

Lastly, the subcommittee knows well the need to have a hardrock Good Samaritan policy enacted to provide a critical tool for western abandoned mine clean up. We appreciate the subcommittee's work in the last Congress to find the solution. Under Chairman Lamborn's leadership, good progress was made. After the committee passes this bill, we would like to see this subcommittee take up the hardrock abandoned mine bookend.

### **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. 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.