Subcommittee on Energy and Mineral Resources
Paul Gosar, Chairman
Hearing Memorandum

May 22, 2017

To: All Subcommittee on Energy and Mineral Resource Subcommittee Members

From: Majority Committee Staff, Josh Hoffman and Ashley Nichols (x5-9297)
Subcommittee on Energy and Mineral Resources

Hearing: Legislative hearing Discussion Draft of H.R. ____(Rep. Darin LaHood), *"Community Reclamation Partnerships Act"*
May 24, 2017 at 2:00 PM; 1324 Longworth HOB

Discussion Draft of H.R. **____ (Rep. LaHood), *"Community Reclamation Partnerships Act"***

Summary of the Bill

The bill amends the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between states and non-governmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977.

Invited Witnesses

Mr. John Stefanko
Deputy Secretary for the Office of Active and Abandoned Mine Operations
Pennsylvania Department of Environmental Protection
Harrisburg, Pennsylvania
(on behalf of the Interstate Mining Compact Commission and National Association of Abandoned Mine Land Programs)

Mr. Chris Wood
President/Chief Executive Officer
Trout Unlimited
Arlington, Virginia

Mr. Thom Kay
Senior Legislative Representative
Appalachian Voices
Boone, North Carolina

Background

Thousands of inactive coal mines, abandoned before the era of modern regulation, can be found in communities across the U.S. Today, over **$10.5 billion** worth of abandoned mine sites remain, each of which has no living responsible party.[1] Many of these abandoned mines pose health and safety risks or environmental hazards to the surrounding communities, burdening landowners and inhibiting opportunities for further development.

While the states are responsible for reclaiming these abandoned mine sites and undertake numerous cleanup projects every year, the need for reclamation in coal communities has encouraged non-governmental organizations (NGOs) to contribute their resources towards these much-needed projects. These NGOs are willing to partner with states on these abandoned mine land projects, but are hindered by several hurdles that prevent their participation, including potential liability and compliance responsibilities with respect to mine drainage treatment projects.

This legislation formally recognizes non-governmental entities that wish to participate in a state reclamation program as "Community Reclaimers." The bill minimizes undeserved liability for these partners by enabling the state to assume responsibility for all Community Reclaimer projects, just as they currently do for approved Abandoned Mine Land (AML) contractors.

This legislation would also statutorily recognize agreements between states and Federal agencies establishing approved AMD abatement practices at abandoned mine sites. Community Reclaimers would be able to execute these projects in accordance with the relevant state agreements.

Abandoned Mine Land Program and Inventory of Remaining Sites

For over 200 years, from the time the first commercial coal mine was operated in the 1740s until the 1970s, there were no regulations governing environmental standards for mined areas once they were no longer in service.[2] As a result, many of these mines were abandoned without being properly reclaimed.

To address the multitude of abandoned mine sites across the country, Congress enacted the Surface Mining Reclamation and Enforcement Act of 1977 (SMCRA). SMCRA established the AML Program for the reclamation of abandoned coal mines, as well as a regulatory program governing the operation and reclamation of active surface mines. The AML program specifically seeks to address mine sites that were abandoned before the law's enactment on August 3, 1977, focusing primarily on sites that pose hazards to life and property.[3]

---

[1] U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. "Cost Summary National." Abandoned Mine Land Inventory System (AMLIS). https://amlis.osmre.gov/CannedReport.aspx Accessed May 16, 2017.
[2] U.S. Department of Energy. "A Brief History of Coal Use." Fossil Energy Office of Communications. https://fossil.energy.gov/education/energylessons/coal/coal_history.html Accessed May 16, 2017.
[3] U.S. Department of the Interior. Office of Surface Mining Reclamation & Enforcement. "Chronology of Major SMCRA-Related Events." https://www.osmre.gov/lrg/chronlisting.shtm Accessed May 16, 2017.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is the agency responsible for implementing the AML program and administering the AML Fund. States and Tribes receive grants and disbursements from the AML Fund to operate their respective AML programs, maintain an inventory of existing AML sites, and reclaim abandoned mines that pose threats to the surrounding communities. The AML Fund is supported by fees paid by coal operators on each ton of coal produced, which are then reallocated to states and tribes based on a complex distribution formula.[4] This reclamation fee is currently set to expire in 2021.[5]

Presently, 28 states and tribes, known as Primacy States, regulate surface mining operations within the state, manage their own AML programs and receive disbursements from the AML Fund. Primacy States are classified as either certified states, which have certified that they have reclaimed all abandoned coal mines within their borders, or uncertified states, which still have remaining sites to reclaim. Most uncertified states are in the Eastern part of the country, where much of the early mining activity in the U.S. took place. Reclamation work has also been conducted in other non-primacy states and tribes, which do not manage their own reclamation programs. There are currently 11 states and 14 Indian tribes classified as non-Primacy.[6]

Since 1977, over $10.5 billion in mining fees have been deposited into the AML fund. The Department of Interior has distributed over $8 billion from the AML fund for the reclamation of abandoned mine lands, the administration of grants to states and tribes, and distributions to United Mine Workers of America retiree healthcare and pension plans.[7]

To date, almost $4 billion has been spent completing over 11,000 mine reclamation projects. Over 4,200 reclamation projects are currently being conducted and 6,650 sites have yet to be reclaimed.[8] These remaining sites represent more than $10.5 billion in outstanding reclamation work, including $4 billion worth of high priority sites.[9]

It is important to note that not all existing AML sites are catalogued in the inventory systems managed by the states and OSMRE. While some unlisted sites are simply unknown to the AML programs, additional sites are deliberately not listed in the inventory because they do not pose threats to nearby communities. These low priority or previously unknown sites may become reclamation priorities as new residential and commercial developments are constructed in their vicinity, or as the conditions of the mines continue to deteriorate.

---

[4] U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. "Grants Resources." https://www.osmre.gov/resources/grants.shtm Accessed May 16, 2017.
[5] U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. "Chronology of Major SMCRA-Related Events." https://www.osmre.gov/lrg/chronlisting.shtm Accessed May 16, 2017.
[6] U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. "Non-Primacy State and Tribes." https://www.osmre.gov/programs/AMLIS/nonPrimacyST.shtm Accessed May 17, 2017.
[7] U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. "Reclaiming Abandoned Mine Lands." https://www.osmre.gov/programs/AML.shtm Accessed May 16, 2017.
[8] Office of Surface Mining Reclamation and Enforcement. Abandoned Mine Land Inventory System (AMLIS). "Site Status National." https://amlis.osmre.gov/CannedReport.aspx Accessed May 17, 2017.
[9] Office of Surface Mining Reclamation and Enforcement. Abandoned Mine Land Inventory System (AMLIS). "Cost Summary National." https://amlis.osmre.gov/CannedReport.aspx Accessed May 17, 2017.

Outstanding AML Liabilities in EMR Subcommittee Member Districts

Member	District	AML Inventory
Gosar	AZ-4	$0
Gohmert	TX-1	$101,500
Lamborn	CO-5	$15,996,058
Wittman	VA-1	$0
Pearce	NM-2	$6,626,740
Thompson	PA-5	$441,970,898
Tipton	CO-3	$18,061,396
Cook	CA-8	$0
Westerman	AR-4	$958,296
Graves	LA-6	$644,368
Hice	GA-10	$291,000
LaHood	IL-18	$17,904,880
Cheney	WY	$95,741,326
Bishop	UT-1	$2,275,400
Lowenthal	CA-47	$0
Brown	MD-4	$0
Costa	CA-16	$0
Tsongas	MA-3	$0
Huffman	CA-2	$0
Beyer	VA-8	$0
Soto	FL-9	$0
Barragan	CA-44	$0
Grijalva	AZ-3	$0

Acid Mine Drainage Abatement Challenges

Many states, particularly those in the Eastern U.S., face the unique challenge of addressing discharges of acid mine drainage (AMD) from abandoned mine sites. AMD is acidic water that has been contaminated with heavy metals due to past coal mining activity. When water reacts with rocks that naturally contain sulfur-bearing minerals, sulfuric acid is produced. This sulfuric acid can cause rocks to release heavy metals into the water.[10]

The presence of AMD presents additional challenges for states seeking to reclaim their abandoned mine sites. Under SMCRA, states are required to meet Clean Water Act (CWA) standards when constructing water treatment plants for AMD abatement. In many cases, bodies of water with AMD will never be able to meet CWA standards due to the naturally occurring processes and minerals present at these sites, even after employing extensive reclamation and water treatment efforts. Because states are currently required to meet unrealistic standards, they

[10] U.S. Environmental Protection Agency. "Abandoned Mine Drainage." https://www.epa.gov/nps/abandoned-mine-drainage Accessed May 17, 2017.

must either risk noncompliance with the CWA or choose to forego undertaking these projects entirely.

Some states have addressed this problem by working with relevant state agencies to establish a strategy specifically for treating AMD sites. In Pennsylvania, for example, there are significant AMD discharges impacting numerous local communities. Pennsylvania has established guidelines for AMD abatement work that is uniquely tailored to the needs of that state. Projects carried out in accordance with these guidelines have resulted in improved water quality throughout the state. This legislation enables states to conduct water treatment projects at AML sites according to approved agreements that establish AMD treatment practices, such as the strategy currently being utilized by the State of Pennsylvania.

Creating Opportunities for Community Reclaimers

AML sites pose multiple challenges for coal communities nationwide. Not only do these sites threaten the health and safety of local residents, they also stymie local efforts to promote economic development near inactive mines. While over $4 billion has been spent reclaiming degraded sites, the large volume of remaining AML projects will continue to constrain state resources and burden local communities for decades to come.

With the coal industry experiencing a shrinking market share and thousands of sites awaiting cleanup, there are concerns as to whether the full inventory of sites can be addressed relying solely on the coal fee. The need for AML cleanup in these communities has encouraged state reclamation agencies to identify avenues for increasing the amount of resources available to the AML program and to seek participation from non-governmental entities that wish to lend a hand. Watershed groups, conservation organizations and industry have long sought to bring their resources and technical expertise to bear in cleaning up abandoned mine lands.

States like Pennsylvania have recognized the mutual benefits of such partnerships and have implemented their own programs for involving third parties in mine reclamation. In 1999, Pennsylvania enacted the "Environmental Good Samaritan Act," enabling outside organizations to reclaim and treat polluted water at AML sites.[11] This program has led to partnerships with 53 conservation groups that have resulted in the reclamation of almost 80 sites in over 20 counties throughout the state.

However, organizations that wish to participate in state reclamation programs are often deterred by the risk of assuming undeserved liability for sites they wish to reclaim. Indeed, potential Community Reclaimers can be held liable under the CWA for discharges of water from a site that has been significantly improved solely because it can never be brought up to CWA standards.

This legislation seeks to address these impediments by allowing the states to assume liability on behalf of the Community Reclaimers, shielding them from any undue responsibilities under the law. SMCRA already allows for state AML agencies to assume liability on the part of

[11] Commonwealth of Pennsylvania. Department of Environmental Protection. Environmental Good Samaritan Act Fact Sheet. ftp://newftp.epa.gov/GKM_DOCUMENTS/SITE_FILE_MATERIALS/9.28.16/R08-1136194.PDF Accessed May 17, 2017.

contractors that are approved to work on AML sites. This legislation will expand this practice to Community Reclaimers and any subcontractors they may employ, after the Community Reclaimer has demonstrated their wherewithal to improve the environment affected by AML sites.

Major Provisions of the Bill

This legislation seeks to facilitate mine reclamation at SMCRA Title IV eligible abandoned coal mine sites by enabling non-governmental entities to participate in the reclamation of abandoned mine lands and contribute their own resources towards such projects.

Currently, states and potential Community Reclaimers seeking to treat water pollution resulting from abandoned mine sites face significant liability and compliance responsibility under the CWA. In most cases, returning an abandoned mine site to conditions that will meet CWA standards is simply infeasible. To account for this challenge, some states have established strategies describing how the state will carry out their responsibilities under the CWA. These strategies provide a tentative path forward for the states for improving the environmental conditions at the site.

Section 3, Subsection (m):

- Clarifies state authority related to water treatment at abandoned mine sites by statutorily recognizing valid agreements entered into between the relevant state and Federal agencies.

- Enables states to enter into agreements with relevant state and Federal agencies to ensure that work intended to treat water pollution resulting from mine drainage results in a significant improvement to the environment.

- Requires that new and existing agreements be approved by the Secretary of the Interior and the Administrator of the Environmental Protection Agency.

- This section gives credence to the AMD treatment strategies already employed in some states.

Section 3, Subsection (n):

- Provides for the establishment of Community Reclaimer Partnerships. These partnerships will allow eligible Community Reclaimers to participate in abandoned mine land cleanup projects.

- Provides partial liability shielding to Community Reclaimers, in a similar fashion to current state AML Contractors, by enabling the states to formally assume liability and compliance responsibility on their behalf under the existing liability paradigm that exists within SMCRA.

- Authorizes the Secretary to approve Community Reclaimer Partnership projects if: 1) the proposed project will be conducted by eligible Community Reclaimers and/or approved contractors; 2) projects involving mine drainage are consistent with the states' approved agreement under 405(m); 3) the project will reclaim a Priority 1, 2 or 3 abandoned mine site; 4) the state has assumed responsibility for the project on behalf of the Community Reclaimer; and 5) the state has the necessary legal authority and financial resources to ensure completion of the project.

- Requires that all projects submitted to the Secretary for approval include: 1) a determination that that the project will facilitate the activities of the State Reclamation Plan; 2) a description of the proposed project and project site; 3) a cost estimate; 4) a schedule of activities; 5) identification of all landowners and an agreement with the current landowner granting access to the site; 6) the contract between the relevant State and Community Reclaimer; 7) documentation demonstrating that the Community Reclaimer has the technical capability, expertise and financial resources to successfully complete the project; 8) a description of the agreement between the Community Investor and the state; 9) contingency plans to be employed in the event of an emergency; and 10) requirements for public notice of the project.

- Defines a Community Reclaimer as an entity that seeks to voluntarily assist a state with reclamation projects, has not caused any lands to become eligible for reclamation under Section 404 of SMCRA, and is not a past or current owner of abandoned mine sites or any other site with ongoing reclamation obligations.

Section 4:

- Requires states to include a list of proposed Community Reclaimer Partnership projects in their annual applications to the Secretary requesting support for their respective state Reclamation Programs.

- Recognizes approved agreements as appropriate standards at AMD treatment sites in lieu of CWA requirements, if a state has an approved agreement in place under 405(m) that will ensure the restoration of the environment at impacted sites.

Administration Position
Unknown at this time.

Cost
CBO has not scored the legislation.