November 4, 2015

Testimony of Trout Unlimited on the House Natural Resources Committee's Energy and Mineral Resources Subcommittee hearing on: H.R. 3843 (Rep. Doug Lamborn), Locatable Minerals Claim Location and Maintenance Fees Act of 2015, H.R. 3844 (Rep. Jody Hice), the Energy and Minerals Reclamation Foundation Establishment Act of 2015.

Chairman Lamborn, 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 mine clean up legislation.

I offer the following testimony on behalf of Trout Unlimited and its 155,000 members nationwide. My testimony will focus on the cleanup of abandoned mine lands, specifically the need to facilitate abandoned mine cleanups by Good Samaritans—those who have no legal obligation to take on an abandoned mine cleanup- but wish to do so in order to improve water quality. Therefore, I will focus primarily on Titles II and III of HR 3843, as well as HR 3844.

We deeply appreciate the Subcommittee's attention to these issues, and we urge the Subcommittee to work with us and other stakeholders on a Good Sam bill to help provide a badly needed tool to facilitate cleanups. Also, we urge the Subcommittee to establish strong bipartisan support for the Good Samaritan aspects of the bill. TU stands ready to go to work to clean up abandoned mine pollution, and we need such legislation to make it happen.

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 coal fields in Pennsylvania to the hardrock mining areas of the Rocky Mountain States, and my testimony is based upon these experiences.

Two century's worth of problems and solutions – A Short Summary

The three million gallon August 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, from abandoned mines. For several scary days, downstream communities in Durango, tribes, and river users in the Animas River faced the loss of access to the river, damaged river-based economies, and threats to agricultural and drinking water. Thankfully, this spill was not as severe as it might have been and the river has returned to pre-spill conditions, but the long term impacts still need to be monitored carefully, and EPA and other stakeholders must apply "lessons learned" from the disaster to future cleanups.

The Gold King accident received extensive media coverage. What is less well-known is that there are thousands of similar, smaller scale abandoned mines that pollute our rivers and streams every day. The lesson from Gold King is not that an EPA contractor screwed up, it is that we

need a much greater sense of urgency about addressing the problem of pollution from abandoned mines.

Cleaning up abandoned mines is a difficult issue. Mining has played, and continues to play, an important role in the economic and social well-being of many communities around the country.

However, mining's legacy -- more than 500,000 abandoned hardrock mines in the American West with an estimated cleanup cost ranging from $36-72 billion -- has persisted for the better part of a century with little progress toward a solution. According to the EPA, abandoned hardrock mines affect 40 percent of headwaters in the western United States. The lack of dedicated funding sources and burdensome liability risk for would-be Good Samaritans has hindered abandoned hardrock mine cleanups.

In the East, 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 extremely valuable Abandoned Mine Lands Fund (AML), a great deal more remains to be done. The cost of cleanup in Pennsylvania alone has been estimated as high as $15 billion.[1]

A reclamation fee, paid by the mining companies, is collected for each ton of coal produced to support an Abandoned Mine Land Fund (AML Fund). Since 1977, more than $8 billion has been put to good use cleaning up and making safe abandoned coal mines. Unfortunately, no similar fund exists to clean up the legacy of hardrock mining, particularly in the western U.S.

With hundreds of thousands of abandoned hardrock mines and cleanup costs in the billions, and with a lack of a dedicated funding source for hardrock mine cleanup, the challenge is daunting. But sportsmen and women are hopeful by nature, and we have set out to tackle this task with the same enthusiasm that we bring to fishing, hunting, and other resource conservation work that we do. If a "journey of a thousand miles begins with a single step," the good news is that we and our partners have taken a number of strong steps already.

We have developed a number of model projects that can be easily replicated. In Pennsylvania, aided by state-based Good Samaritan policy, Trout Unlimited is working with State agencies, watershed groups and other partners, to conduct more than 250 abandoned coal mine pollution projects throughout the state. And Trout Unlimited, again in partnership with state and federal agencies and private landowners, has used the limited Good Samaritan tools afforded by EPA under current law to good effect.

Across the country, we are working in local communities to leverage the resources that are available to restore rivers and streams that are impacted by abandoned mines. This work demonstrates the positive effect that dedicated Good Samaritans can have on local waters, as well as the limitations placed on Good Samaritans as a result of liability concerns under the Clean Water Act. Although projects by TU and others have addressed only a tiny fraction of the

[1] http://pa.water.usgs.gov/projects/energy/amd/

overall problem, each project has substantially restored the health of a particular river or stream. These projects represent significant local victories, and also provide lessons on Good Samaritan restoration generally.

The following testimony is based on TU's experience with these projects, and will describe the work that has been done by Good Samaritans, the roadblocks to Good Samaritan cleanups, and our recommendations for how to facilitate abandoned mine cleanup in the future.

BARRIERS TO GOOD SAMARITAN ABANDONED MINE CLEANUP

Our tried and true pollution cleanup laws, the Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act (better known as "CERCLA"), place the burden of cleanup squarely on the owners of the property. Generally this is an excellent policy for most forms of pollution, but especially in the West, where the parties responsible for developing most of the old mine sites are long gone, and with current owners having little to no incentive to do any of the cleanup because of the liability from the laws, cleaning up these sites can be a legal quagmire.

A partnership between TU, western states, and EPA resulted in EPA policy that provides useful protection to Good Samaritans from CERCLA liability in 2007[2], but Clean Water Act liability has remained a significant obstacle.

CERCLA When TU first started working on abandoned hardrock mines, there were liability concerns under CERCLA and the Clean Water Act that prevented many Good Samaritan projects from moving forward. CERCLA presented a significant barrier to Good Samaritan projects, both because the statute presents real risks for any party helping to clean up toxic wastes, but also because the statute's complexities and perceived risks are incredibly daunting for many watershed groups, local communities, and NGOs.

In 2006, TU completed a pioneering Good Samaritan cleanup in Utah's American Fork Canyon that overcame CERCLA liability concerns with the help of EPA, the Forest Service, and the state of Utah. The liability protection document (an Administrative Order on Consent, or "AOC") negotiated with the EPA for the American Fork work led to the issuance of EPA guidance and model documents for dealing with CERCLA liability protection for future Good Samaritans to use in similar projects.

TU has now negotiated three separate AOCs with EPA covering two different projects—one project on the American Fork in Utah (two AOC's for different phases of the project) and another on Kerber Creek in Colorado. We greatly appreciate the work that EPA has put into their model AOC for Good Samaritan cleanups, and the work that EPA staff have put into negotiating the specific AOCs for TU. Though there remains room for improvement, the AOCs have helped to remove one of the major impediments that have prevented communities, watershed groups, conservation organizations, TU chapters, and others from undertaking abandoned mine cleanup projects.

[2] http://water.epa.gov/action/goodsamaritan/

Clean Water Act There are many projects where water quality could be improved by collecting run-off, or taking an existing discrete discharge, and running the water through either an active or passive treatment system. However, for would-be Good Samaritans, Clean Water Act (CWA) compliance and liability issues remain a barrier to such projects. A number of 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* (discussed more below) creates some uncertainty around that approach.

Stakeholders in projects involving treatment of wastewater have balked 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. Typically, NGOs implement Good Samaritan projects through specific grants provided by government agencies, individuals, private foundations, and other donors. Although such grants often include funding for future monitoring and maintenance, nonprofit groups do not have funding for major improvements to a system should those improvements be needed to comply with a permit. As a result, the liability risk associated either with complying with a permit, or building a system without a permit, represents a completely unfunded risk that could threaten the financial health of the organization.

Second, for many projects it may be impossible to obtain a permit, because the treatment systems 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, water quality might not meet CWA standards; the would-be Good Samaritan is on the hook to make sure it does. It is possible to spend $X to clean water to 90 percent of the CWA standards, resulting in significant benefits for communities, fisheries, and aquatic systems. But the increment needed to get to 100 percent of the Clean Water Act standard may be $5x.

This is not to say that CWA standards should be weakened; just the opposite, in fact. But there should be incentives for would-be Good Samaritans to make water cleaner even if still short of full CWA standards.

It is also sometimes difficult to predict in advance the results that a given treatment system will achieve. Although one can know in advance that a project will produce a significant improvement in water quality, one cannot always know the exact treatment level it will achieve for every parameter until the treatment system has been in operation for some time. Finally, many of these projects are built in remote mountain areas where access for monitoring and maintenance is very difficult. These projects are not well suited for traditional NPDES permits that require monitoring for and compliance with detailed numeric criteria.

SOLUTIONS ARE NEEDED TO SUPPORT GOOD SAMARITAN RESTORATION

Good Samaritan projects need an appropriate mechanism that requires the project to produce significant improvements in water quality implement best design and management practices, and conduct appropriate monitoring, but not expose the Good Samaritan to liability if the project at some point fails to achieve a required criterion for a given pollutant.

Cleanup opportunities have been missed because of the lack of such a Good Samaritan policy. For example, the sulfate-reducing bioreactor phase of the Tiger Mine Restoration Project near Leadville, CO, a proposed project in the headwaters of the Lake Fork of the Arkansas River, is on hold. Though other portions of this project have been successful in stabilizing and conveying adit discharge, the sulfate-reducing bioreactor would be another downstream option to treat the acid mine drainage coming from the tunnel. The planned bioreactor is designed to address the low pH and high metals concentrations that are causing the Lake Fork of the Arkansas to be contributing significant metals loading to one of Colorado's most treasured fisheries, the Arkansas River. Despite the fact that the project would dramatically improve water quality, TU and its partners cannot proceed without liability protection under the Clean Water Act.

Colorado's Upper Animas River, once a shining example of the benefits of abandoned mine cleanup and now known worldwide for the Gold King spill, also demonstrates the limits placed on Good Samaritans under the Clean Water Act. The Animas River Stakeholders Group (ASRG) was instrumental in partnering with state and federal agencies since the 1990s to clean up abandoned mines and restore water quality in the Animas River, which resulted in the reestablishment of an outstanding trout fishery downstream in Durango. Today, however, we are losing ground in the fight against abandoned mine pollution in the Animas, and a number of necessary restoration projects are held up by CWA liability concerns.

In short, any entity that constructs a bioreactor or other similar treatment system becomes liable for that discharge in perpetuity under the Clean Water Act. Understandably, this is a risk that the Tiger Mine project partners are not willing to take even though a study of a bioreactor has been completed, the site has been prepared, and several sources of funding have been secured.

TU has worked with the EPA to address these challenges, and we appreciate the efforts the agency has made to help us and other would-be Good Samaritans. In December of 2012 the EPA issued a guidance memo designed to clarify how the Clean Water Act applies to Good Samaritan abandoned mine cleanup projects. The guidance memo requires potential Good Samaritans to fully comply with the 2007 Superfund policy, but allows eligible Good Samaritans to avoid CWA requirements under certain circumstances.

Several years of experience now indicate that the restrictions in the guidance memo may not be a good fit for the type of work that is needed. Nonetheless, we are pleased that EPA is making abandoned mine cleanup a higher priority, and we are eager to explore ways to increase our work with EPA at sites around the West. In spite of this progress, the Clean Water Act remains a barrier to cleanups at the Tiger Mine and Upper Animas, and similar projects elsewhere. Federal legislation is needed to provide permitting authority to facilitate these and other cleanups in a way that provides clarity and certainty to Good Samaritans.

Western Hardrock Mines and Eastern Coal Mines: Similarities and Differences

Eastern coal mines are not subject to the CERCLA liability, but a recent court decision has extended the Clean Water Act liability concerns that have long plagued the West to the Eastern coal fields. In *West Virginia Highlands Conservancy v. Huffman*, 625 F. 3d 159 (4th Cir. 2010), the Fourth Circuit held that facilities run by the state of West Virginia to treat water pollution coming from abandoned coal mines met the definition of a point source under the CWA. In addition, the court held that the state was the operator of those facilities and therefore needed a permit under sections 301 and 402 of the CWA. The decision has introduced some uncertainty regarding how the CWA applies to projects that treat acid mine drainage from abandoned coal mines in Pennsylvania and other eastern states. But the contrast between what is occurring to clean up abandoned coal mines in the East and what is happening in the West, especially in terms of use of active and passive treatment facilities, is striking.

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 and at least limited liability protection via state Good Samaritan law. The Pennsylvania model is precisely what we need to export to the federal level for all abandoned mine pollution.

WHY GOOD SAMARITANS?

There are numerous citizen groups that have formed in this country for the purpose of protecting, conserving and enhancing the natural resources of their local communities. They work collaboratively with government agencies and landowners to develop solutions to complex watershed problems. The following are some examples of the good work that is occurring.

By using the CERCLA liability protection and avoiding projects that trigger Clean Water Act liability, and with the support of the Tiffany & Co. Foundation, Freeport-McMoRan Copper & Gold, Inc., and other partners and supporters, TU has made substantial progress in cleaning up abandoned mine impacts in several watersheds in the West.

American Fork, Utah. The Pacific Mine cleanup in the American Fork Canyon was the first voluntary, non-profit-led abandoned hardrock mine restoration project in the West. TU and its partners received awards from the Utah Board of Oil, Gas and Mining and the EPA for work on the American Fork. Anglers can now catch Bonneville cutthroat trout immediately downstream of the area where pollution used to run off mine tailings piles.

Mores Creek, Idaho. To date, over 14,000 cubic yards of mine tailings have been removed from the banks of Mores Creek to create a more natural floodplain area, and trees planted along the stream will provide critically needed shade for coldwater fish. Hundreds of schoolchildren from the area have participated in tree plantings and other restoration work. Migratory fish are now seen using instream habitat structures installed as part of the restoration effort.

Kerber Creek Watershed, Colorado. In total, TU and its partners restored over 80 acres of mine tailings, improved 8 miles of stream, and installed over 340 instream structures that are now home to a reproducing brook trout population. Volunteers logged over 13,000 hours of work in the watershed over the past three years. The restoration project has received four prestigious awards: the BLM's *Hardrock Mineral Environmental Award*, the Colorado Riparian Association's *Excellence in Riparian Area Management Award*, the Rocky Mountain Region of the USFS's *Forest and Grassland Health Partner of the Year*, and the Public Lands Foundation's *Landscape Stewardship Award*.

Leavenworth Creek Watershed, Colorado. In 2015, TU and Federal partners removed and capped 5,400 cubic yards of mill tailings containing high levels of zinc and lead, while constructing 2,500 feet of rip rap channel through a dispersed tailings area adjacent to the Waldorf Mine. Removing the mill tailings, creating a vegetated floodplain, and establishing a rip rap channel will allow for the conveyance of clean surface water runoff to Leavenworth Creek. This is an important step in improving water quality to downstream South Clear Creek, which acts as the drinking water source for the town of Georgetown, CO.

Clark Fork River Basin, Montana. TU and partners have reclaimed four mine sites in the Middle Clark Fork River and have six ongoing mine reclamation project in the planning and design phases. For example, on Mattie V Creek TU and its partners removed 12,000 cubic yards of dredge tailings and reclaimed 500 feet of stream channel reclamation project. Fish are now swimming up Mattie V Creek from Ninemile Creek for the first time in 80 years. Because of these and other accomplishments, the TU project manager in Montana was awarded with the American Fisheries Society's Individual Achievement Award and the US Forest Service's Rise to the Future Award in 2010.

Kettle Creek, Pennsylvania. Our experiences in Pennsylvania, where Clean Water Act liability has historically not been a concern, is illustrative of the positive affect of Good Samaritan cleanups. Over the last 10-15 years, Pennsylvania has seen a dramatic increase 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 state, the majority of which have been constructed by private watershed groups, conservation districts, or other local groups. According to DEP, local groups are currently responsible for operations and maintenance on "hundreds" of passive treatment systems in the state.

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 three miles of previously dead streams and six 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%, and pH increased from 3.8 to 6.6. In acknowledgement of TU's leading role in advancing abandoned mine cleanup projects that focus on restoring trout streams across the West Branch Susquehanna River watershed, TU was honored with the prestigious *President's Fishery Conservation Award* in 2011 from the American Fisheries Society.

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 Good Samaritan projects restored a significant water body and represents a big win for the local community.

RECOMMENDATIONS

There are two main ingredients for effective abandoned mine pollution cleanups: (1) well-designed liability protection for Good Samaritans involved in cleanup efforts, and (2) increased, dedicated funding to get the job done.

1. Liability Protection Needed for Good Samaritans

There are potentially two paths to addressing liability issues for Good Samaritans. The first is to identify a mechanism under existing law that would facilitate Good Samaritan projects. The EPA CECLA guidance described above is a positive step that may clear the way for more Good Samaritan cleanups, but remaining concerns about Clean Water Act liability continue to prevent Good Samaritans from completing some much-needed projects.

[1] Evan Hansen, Alan Collins, Julie Svetlik, Sarah McClurg, Alyse Shrecongost, Rob Stenger, Mariya Schilz, and Fritz Boettner. *An Economic Benefit Analysis for Abandoned Mine Drainage Remediation in the West Branch Susquehanna River Watershed, Pennsylvania.* Downstream Strategies, LLC. July 3, 2008.

The uncertainties regarding the extent of current administrative authorities under CERCLA and the Clean Water Act should also be addressed by new legislation that provides a workable pathway for Good Samaritan abandoned mine cleanups.

Good Samaritan Legislative Recommendations Based on our experience, we offer the following concepts for the Subcommittee's consideration. As I hope I am making clear, Trout Unlimited sees a strong need for such legislation. But the legislative work must be approached carefully. If the laws are complex, the problems posed by mine pollution are often equally complicated. Remediation work is often site-specific, technically challenging, and as the Gold King mine spill showed, there are substantial risks if accidents occur—even in well-intentioned field work.

The four most important lessons we have learned are as follows:

1. Good Samaritan protections should extend only to Good Samaritans—companies, communities, and organizations that have no historic interest in, or connection to, relevant abandoned mines;
2. The more narrow and targeted the Good Samaritan approach to the mine pollution problem, the better; and
3. The more we can build on current laws and administrative policies that have worked on the ground in the past, the better, again in terms of actually getting things done on the ground.
4. The lack of a dedicated cleanup fund for hardrock abandoned mines is a crucial limiting factor to expanding abandoned mine cleanups.

Title III, HR 3843 Trout Unlimited appreciates the Good Samaritan provisions of HR 3843. We reviewed earlier drafts with staff over the past year, and a number of changes we suggested were incorporated in to the bill. Importantly, Title III would provide a mechanism for coal abandoned mine projects to receive Good Samaritan protection as well as hard-rock clean up projects. Other Good Samaritan bills in the past did not do so. Title III's clean up standard is good, and its permit mechanism is on track. TU does not need the NEPA limitation for its projects in Section 307, so we would recommend eliminating that.

Also, Trout Unlimited appreciates the formal authorization of the BLM abandoned mine program in Title II, and the direction to BLM to identify Good Samaritan projects. These provisions should ensure the long term viability of our work with BLM. As the bill moves through the committee, we would recommend that a similar provision be added for the Forest Service, who also serves as an excellent partner for us on abandoned mine clean up

As we digest the bill, and allow our field team to assess its benefits, we will have more suggestions for the Subcommittee in the future. For now, I'll summarize by saying that Title III shows real promise for working effectively on the ground.

Tipton/Udall/Bennet bill (H.R. 2970; S. 1443), 113th Congress The Tipton/Udall/Bennet bill from the 113th Congress (H.R. 2970;S. 1443) is a good approach. Its legislative concepts have been refined over the course of several Congresses, and have received scrutiny through several

hearings. The primary feature of the bill is a well-thought-out permit program, grounded fully within the well-established confines of the Clean Water Act's Section 402 point source discharge program. A new version of the Tipton/Udall/Bennet bill is a good option.

Salazar/Allard (S.1848), 109th Congress We know that S. 1848 from the 109th Congress, a bill authored by then Senators Salazar and Allard, is being considered for introduction now. Although we supported it at the time, our view today is that it is overly broad for contemporary needs.

When S. 1848 was being developed, there was no administrative option available from the EPA, and Trout Unlimited was ramping up its efforts on the ground to do mine pollution work. We needed a legislative solution. TU worked very hard on the bill, and following some major compromises from a number of stakeholders, the bill was approved by the Senate EPW committee. However, it never advanced, in part because of the substantial criticism it took for being overly broad in its liability exemptions from a number of federal, state, and local laws. Simply put, it is broader and less targeted than is necessary to get Good Samaritan work done.

The bill does have good features, and appropriate changes to the old bill might make it a useful option. Most of the permitting mechanism is fine and workable. We like the bill's fundamental permitting standard—projects are required to meet applicable water quality standards to the maximum extent reasonable and practicable— which is quite similar to the standard in the Tipton/Udall/Bennet bill. Another positive feature is that projects are eligible for Clean Water Act Section 319 funding.

CERCLA-based Concept We agree that there is another concept worth exploring wherein a new bill would make small changes to CERCLA to allow the CERCLA permit shield to cover Clean Water Act liability in a targeted fashion. The Colorado Attorney General's office is making good progress on developing such an option, and a number of stakeholder groups believe that this concept could work. Trout Unlimited urges Congress to give this option strong consideration.

Lastly, whatever the legislative vehicle might be, we urge Congress to provide Good Samaritan protection for both coal and hardrock abandoned mine cleanups, as HR 3843 does. Since the on the ground problems and their solutions are so similar, such a confluence of eastern and western interests is a good strategic stroke.

2. Increased, Dedicated Funding: Abandoned Mine cleanup work needs funding

I am sure the Subcommittee hears about funding needs at every hearing, from nearly every witness. I wouldn't be doing my job at this hearing unless I highlighted the need. But I hope it is clear to the Subcommittee, that even if a perfect Good Samaritan bill is approved and implemented, the work will not get done without adequate funding. Here are several important steps Congress should take to fuel good abandoned mine cleanup work:

HR 3844 Trout Unlimited agrees that authorizing a private/public fundraising foundation, similar to the National Fish and Wildlife Foundation, for the purpose of funding abandoned mine cleanup, is a good concept. Such a move would cost very little, but might prove extremely valuable in leveraging private sources of funding for cleanup. The valuable donations Trout Unlimited has received from mining companies and the Tiffany & Co., Foundation have been leveraged on a more than 5:1 basis to provide for western cleanups. These donations show that such a program might be beneficial. It seems like a win-win concept that could secure bipartisan support.

Provisions of HR 3844 are promising. Two changes we would recommend are the following: 1. add a phrase such as "remediation of water pollution caused by abandoned mine lands" to the purposes section of the bill to ensure that it is a priority for work funded by the bill; and 2. Again, add persons with experience in "remediation of water pollution caused by abandoned mine lands" to the list of requirements for directors, and include a criterion for a director who has experience specifically on partnering with state and federal agencies, mining industry members, to clean up abandoned mines. Just as with HR 3843, we will provide the Subcommittee with additional comments as we review the bill in greater depth.

Also, passage of a bill like HR 3844 should in no way obviate the need for Congress to find an analog for western hardrock mining similar in size and scope to the coal AML program. Thus a critical recommendation for Congress to consider is the following.

Provide a dedicated source of funds for abandoned hardrock mining cleanups: Congress should establish a fair royalty from any minerals taken from public lands, a portion of which should be invested in an abandoned hard-rock mine cleanup fund. Almost every commodity developed off public lands--coal, wood fiber, oil, gas, and forage— has dedicated funding for mitigation of impacts and restoration. The only commodity that lacks such a dedicated fund is hard rock minerals. Representatives DeFazio and Grivalva have developed 1872 Mining Law reform bills which contain this type of provision.

Reauthorize Title IV AML for coal. The AML fund is the lifeblood of funding for abandoned coal mining work in the coal field areas of America, especially the East. Congress passed a very useful 15 year reauthorization for the AML fund in 2006. Trout Unlimited, states, 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.

CONCLUSION

Thank you for considering our views, and thank you for working with us on these important matters.

We urge you to work together to develop and introduce a strong, bipartisan bill as soon as possible. A bipartisan approach would greatly enhance the prospects for passing a bill – and the sooner a bill is passed in to law, the sooner we get to work to clean up mine pollution. We stand ready to work with you so that affected communities around the country will again have clean, fishable waters.