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TESTIMONY OF R. JOHN DAWES, EXECUTIVE DIRECTOR, FOUNDATION FOR PENNSYLVANIA WATERSHEDS

**HOUSE NATURAL RESOURCES COMMITTEE'S SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OVERSIGHT HEARING ON THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
ABANDONED MINED LANDS PROGRAM**

Chairman Gosar, Ranking Member Lowenthal and Subcommittee Members:

Good morning. My name is John Dawes. I am the Executive Director of the Foundation for Pennsylvania Watersheds. Thank you for this opportunity to testify today on the Pennsylvania experience with the Abandoned Mined Lands Program.

The Foundation for Pennsylvania Watersheds (FPW) has been a watershed restoration and preservation leader since 1994. Structured as an Operating Foundation, we are philanthropic and can also work on policy. In Pennsylvania, the Foundation works on the Growing Greener program with the state's General Assembly, and in Congress, working on oversight and implementation of the Abandoned Mine Lands Fund, and OSMRE. Collaboratively we work with business, industry, nonprofits, donors, large philanthropies, and state and federal agencies. FPW invests in local efforts to protect healthy streams, clean-up pollution, and restore degraded aquatic habitat. Our mission is to protect the best of the best and restore the worst of the worst and to bring back to eco-system function, previously dead waterways.

To date, FPW has invested—statewide—more than \$12.1M to leverage \$168M in local, state, and federal restoration funds for site specific projects. These grants can be viewed at our site: www.fpwgrants.org. This investment has restored more than 787 miles of biologically dead, AMD-impacted streams; restored more than 364,268 linear feet of riparian buffers; and improved nearly 69,000 linear feet of in-stream habitat.

Most importantly is our involvement/leadership, along with the Western PA Conservancy and the Pennsylvania Abandoned Mine Lands Campaign, (PA AML Campaign) a no budget volunteer statewide coalition. We worked relentlessly on the 2006 AMLF reauthorization along with 10 other coal states, that we convened in Pennsylvania. The most significant provision for the program, that we worked successfully to achieve, was mandatory spending. Since reauthorization, we have provided assistance in implementing a \$16M treatment system and \$15M trust fund for the Topper Run Discharge, assisted with the \$24M Ehrenfeld reclamation of a 62 acre spoil pile towering over the community, and our Little Conemaugh Initiative will invest \$3.5M of FPW funds to leverage \$18M in state and federal funds.

Partnerships and leadership are cornerstones of our approach.

Additionally, FPW has:

- Provided more than 1200 grants to 350 different grantees-which include watershed associations, conservancies, municipalities
- Worked with 150 different project partners, and
- Supported work designated in 100 different conservation/reclamation plans.

Pennsylvania's mining legacy impacts 44 of the state's 67 counties, and has resulted in more than 5,500 miles of biologically dead stream miles, and approximately 180,000 acres of dead/toxic lands. These impacts have negatively impacted communities' health and safety, real estate value, compromised our obligations to restore the Chesapeake Bay, and thwarted economic development. In fact, Pennsylvania's 5th Congressional District, the District where I live, and represented on this Committee, has the unfortunate distinction of being the most AMD/AML impacted Congressional district in the nation. As tabulated by OSMRE/VISTA member C. M. Mayne, in a May 2016 report, more than 2.7M Pennsylvania Citizens live within 1 mile of these toxic sites. This represents approximately 18% of our population.

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AML actual job generation has been under counted by only recognizing on site jobs. Certainly, the most visible jobs are those associated with digging and moving earth. However, reclamation jobs span numerous North American Industry Classification System (NAICS) sectors. FPW has identified and produced a partial list of diverse economic sectors reflecting the jobs multiplier effect from AML reclamation including:

- Water conveyance system componentry manufacturers,
- Topsoil and mushroom compost,
- Vegetative services including tree planting,
- Aggregate mining,
- Engineering and consulting services,
- Erosion and sedimentation control manufacturing companies,
- General construction/contracting stores,
- Concrete manufacturers,
- Waste water treatment componentry manufacturers,
- Steel piling service providers,
- Metal fabrication companies,
- Pond liner manufacturers,
- Hauling and disposal services,

- Heavy equipment supply stores and mobile repair services,
- Equipment rental facilities,
- Local restaurants/convenience stores,
- Gas stations,
- Diesel delivery services,
- Earth boring services,
- Utility workers, and
- Hotels/motels.

Reclamation has the potential and is actually putting miners back to work. Who is better at moving earth than miners? The Ehrenfeld Project is a prime example of this principle. This project benefits three Cambria County Municipalities: Croyle Township, East Taylor, and Ehrenfeld Borough. This DEP BAMR 160-acre project is intended to eliminate public health and safety concerns arising from abandoned mine land (AML) features that are located within close proximity to municipality residents. Primary AML concerns include: steep highwalls, refuse piles that are moving and endangering life and property, burning refuse material with accompanying health threats, and open pits. In addition to health and safety concerns, the project will help mitigate environmental concerns associated with sediment and pollution loadings into the Little Conemaugh River Basin. PADEP contracted with Rosebud Mining for reclamation services. Under this 36-month contract of approximately \$13.5M, Rosebud called back 40 furloughed miners. This project will support the development of the national 9-11 Memorial Trail, and will restore 45% of Ehrenfeld's developable land, all while removing 3.2 million tons of polluting refuse and addressing water contamination, caused by every rain.

III

As a gubernatorial appointee to the Chesapeake Bay Program's Citizens Advisory Committee, under 3 administrations, I am aware of Pennsylvania's Bay restoration obligations. Out of 45 approved Best Management Practices listed in the state's WIP or Watershed Implementation Plan, the very first practice calls for reforestation or reclamation of 14,562 acres of abandoned mine land in the Susquehanna Basin. This is out of 119,000 acres of AML in the Bay watershed. The Foundation helped to pay for this inventory along with the Commonwealth. The Bay model is science based upon loadings of sediment, nitrogen, and phosphorus coming from a variety of sources. The role of reclamation in this effort should not be underestimated. Furthermore, it is a quality of life and economic vitality issue locally, not just an impact upon the Chesapeake Bay.

On the topic of inventory, there seems to be great discrepancy between the cost nationally of reclamation, and just the cost confronting Pennsylvania. In 1995, PADEP estimated that the full cost of cleaning up all impacts from the legacy of coal mining, including acid mine drainage, would cost \$15B in Pennsylvania alone! This is in stark contrast to the national figures for cleanup out posted by OSMRE and AML states.

One of the hopeful and important provisions of the RECLAIM Act (HR 1731) is the additional funding for planning and improved inventories. This would encourage new technologies to enable our state and local watershed associations to complete multi-year planning for full restoration in a community---both on land and water resources.

As local groups often initiate a project---water quality monitoring, contracting for a watershed assessment, prioritizing sites, based upon basic needs, philanthropies fill in gaps in order to provide a sequential restoration leading to all of the benefits of clean streams and headwaters.

There is also great alignment with large non-profits in Pennsylvania such as Trout Unlimited, Pheasants Forever, Ducks Unlimited, the PA Fish & Boat Commission, and the PA Game Commission. The PA AML Campaign concurs with IMCC's formal resolution for reauthorization on several key points such as:

1. Funding for the emergency program;
2. 30% set-aside program;
3. Mandatory spending;
4. Exemption for AML reclamation projects from jurisdiction under the Mine Safety and Health Act of 1977; and
5. Interest from the AML Fund shall continue to be transferred to the UMWA Pension Plan but Principle from the AML Fund should remain dedicated exclusively to AML work. There may be a divergence of positions concerning the AML fee. The PA AML Campaign strongly suggests, that at minimum, the fees be restored to 1977 levels as provided in the original SMCRA forty years ago with no inflation provisions.

IV

Reauthorization of the Abandoned Mine Reclamation Fund Fee is important to protect our communities and families from hazards posed by coal mines abandoned before 1977. Dangerous shafts, mountains of black waste, polluted waters, and depressed economies afflict ½ of the citizens of the United States. The Abandoned Mine Reclamation Fund is the primary source of money available to states and tribes to fix these problems. We have successfully used the fund to clean up toxic mine water, extinguish mine fires, and eliminate other dangerous abandoned mine hazards. Public health and welfare, restoration of the land, and cleaning of polluted streams requires congressional action to reauthorize the fee collection until the year 2036. Failure to act continues a cycle of depressed economies and unemployment while exposing our communities and families to health and safety hazards. Congress needs to act now, and hopefully before the end of this Congress, to reauthorize the Abandoned Mine Reclamation Fund fee collection.

The following are recommendations from the PA AML Campaign:

1. Reauthorization until year 2036

Collection to the fund is set to expire in 2021. Public health and welfare, restoration of the land, and cleaning of polluted streams requires congressional action.

2. Restructure the Fees

Previously, the fee structure was based on the type of mining activity, surface vs underground. As more mining is occurring underground, fee collection has also dropped—with surface mines paying a higher fee. Restructuring the fees will provide much-needed funding to reclaim the remaining inventory.

3. Increase Minimum Program State funds to \$5 Million annually

States which have significant AML problems, but which have small AML programs, are supposed to be guaranteed minimum funding of their programs by statutory mandate. Since 2006, this funding has been set at \$3 million. In recent years, minimum program states have received significantly less due to sequestration. This potentially affects ten states. **Annual funding for minimum program states should be raised to \$5 million.**

4. Exempt SMCRA Title IV Grants from Sequestration

Each year we continue to see cuts in the 5 – 7% range or \$33m from PA's share for the mandatory funding that supports state and tribal AML programs. ***The SMCRA Title IV grants should be exempt from sequestration and all Title IV sequestered funds should be given back to the states, retroactive to FY 2013.***

5. Establish Direct Line Item in OSM Budget for Emergency Projects

In FY 2011, OSM issued guidance to the states that the agency “will no longer declare emergencies.” OSM has shifted responsibility for emergencies to the states and tribes with the expectation that they will utilize non-emergency AML funding to address them.

We urge Congress to approve direct line-item in OSMRE's budget specifically to fund emergency projects thereby allowing the states to utilize their annual AML grant to fund high Priority P1/2 projects.

6. Maintain Priority Ranking Criteria of priorities 1, 2, and 3

The current priorities should be maintained, including the ability to fund water-related projects under Priorities 2 and 3.

7. Maintain Mandatory Distribution

With the 2006 amendments to SMCRA, distributions to the states were no longer subject to Congressional appropriation and the distributions were made mandatory. ***Mandatory distribution should continue so Pennsylvania can receive the most funding possible in a given year.***

8. Maintain 30% Set-Aside Option for States and Tribes

Pennsylvania has the flexibility to direct funding to AMD with the 30% AMD Set-Aside provision. Up to 30% of a state's annual grant may be "set aside" specifically to implement projects that eliminate sources of AMD or treat waters degraded by AMD. A state chooses annually what percentage (0%–30%) of its grant it will set aside to address AMD problems during that year. Pennsylvania has taken advantage of this provision to construct and maintain AMD treatment systems. ***It is important to maintain the 30% Set-Aside provision to maintain flexibility for use of funds.***

9. Maintain transfer of interest to the Combined Benefit Fund

Interest generated on the Abandoned Mine Reclamation Fund is currently transferred to the Combined Benefit Fund to defray health care costs for retired miners and their dependents whose companies have gone bankrupt or are no longer in business. The CBF pays for health care expenses remaining after Medicare and Medicaid reimbursement and pays for prescription drugs. There are approximately 60,000 beneficiaries, whose average age is 78 years old. **The transfer of interest to the Combined Benefit Fund should continue.**

10. Reaffirm Support for OSM's Watershed Cooperative Agreement Program

The Watershed Cooperative Agreement Program (WCAP) was implemented by OSMRE in FY 1996. The purpose of the WCAP is to make funds available directly to not-for-profit organizations, especially small local watershed organizations, to undertake local projects to clean streams affected by abandoned mine drainage.

11. Funding for water (Abandoned Mine Drainage)

Abandoned mines leak acidic, alkaline, and metal-contaminated water, polluting public water supplies, destroying fish and wildlife habitat, depressing local economies, and threatening human health and safety. Pennsylvania is representative of eastern coal states with abandoned mine drainage (AMD) problems, and abandoned mine drainage is the largest contributor to water quality impairment in the Commonwealth. More than 5,500 miles of Pennsylvania's streams are impaired by AMD. **It is critical that abandoned mine drainage problems continue to be eligible for funding.**

12. Encourage redevelopment of abandoned mine lands

As abandoned mine lands are reclaimed, they offer potential locations for economic development projects. By developing and marketing abandoned mine lands that would normally struggle to attract new investment, these "grayfields" can be turned into regional assets by creating economic opportunities, preventing sprawl, and conserving open space and natural resources. For example, government facilities could be encouraged to locate on these sites rather than on previously undeveloped green spaces. **States should be able to use Title IV funds in ways that promote reclamation, leverage private investment, and, where it is appropriate, encourage redevelopment.**

We hope the Committee shares our commitment and sense of urgency to reauthorization the AML Program in this Congress. AML states and coal impacted communities need assurances that Congress is making a long-term commitment to job opportunities through AML/AMD reclamation and community revitalization.