



Testimony of
Chris Wood, Trout Unlimited
Before the House Natural Resource Committee
Subcommittee on Energy and Mineral Resource

Legislative hearing on H.R. ____ (Rep. LaHood), “Community Reclamation Partnerships Act”

June 14, 2023

Chairman Stauber, Ranking Member Ocasio-Cortez, 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 cleanup legislation.

I offer the following testimony on behalf of Trout Unlimited and its nearly 350,000 members and supporters nationwide. My testimony will focus on the Discussion Draft of the Community Reclamation Partnership Act (draft bill), 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.

I have been honored to appear before this committee to speak in support of this legislation previously. This bill has been considered – and advanced – by this committee in the last three congresses. We’ve been pleased to support it each time. We thank Rep. LaHood for continuing to push for this commonsense proposal and we hope that this is the year we will finally see this advance into law. We deeply appreciate the Subcommittee’s focus on this issue, and we urge the Subcommittee to continue to work with us, the states, and tribes, 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 bring together diverse interests to care for and recover rivers and streams so our children can experience the joy of wild and native trout and salmon. Our members and supporters live, recreate, hunt and fish along the waterways impacted by abandoned mines. In pursuit of this mission, TU members and volunteers dedicate more than 700,000 hours annually in projects to restore and improve the places they live, love, and fish. This work includes efforts 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, to placer mines in Alaska. TU stands ready to expand our work to clean up abandoned mine pollution, but we need passage of legislation such as the Community Reclamation Partnership Act to make it happen.

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

Abandoned coal mines dot the Appalachian and western landscapes. 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.¹

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 \$6 billion has been put to good use making safe and cleaning up abandoned coal mines.²

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. With the right policy levers and continued funding, we can do a lot more.

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. In short, the law treats those who want to clean up abandoned mines as if they themselves are polluters.

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 uncertainty that has a chilling effect for would-be Good Samaritans.

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 discharge 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 NPDES permit compliance.

Second, for many projects it may be impossible to obtain a discharge 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

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

² <https://www.osmre.gov/news/OSMRE-issues-final-rule-extending-AML-program-through-2034>

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 hold polluters accountable while providing 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

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 Congress continues funding abandoned coal mine cleanups.

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 abandoned 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.

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.

In the past decade, nearly 26 miles of the West Branch of the Susquehanna have been classified as natural trout reproduction waters thanks to water quality improvements. An additional 215 stream miles in the headwater tributaries—many of which were previously polluted by acid mine drainage—were found to support wild and native trout.

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. Although dated, 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.

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 relevant local community.

Cleaning up abandoned coal mine pollution is a long-term job, and long-term funding is needed to get the job done. We were pleased to see Congress reauthorize the Title IV AML fund as part of the 2019 Bipartisan Infrastructure Law (BIL).³ In addition to extending the existing program, the BIL authorized and appropriated nearly \$11.3 billion for deposit into the Abandoned Mine Reclamation Fund

³ The Bipartisan Infrastructure Law (BIL) (Pub. L. No. 117-58), also known as the Infrastructure Investment and Jobs Act, was enacted on November 15, 2021.

administered by the Office of Surface Mining Reclamation and Enforcement (OSMRE). This AML fund is the lifeblood of funding for abandoned coal mine work in the coalfield areas of America, especially the East. We urge Congress to continue to support this program.

Even with this additional funding, state programs only have the capacity to do so much. We need legislation like the *Community Reclamation Partnerships Act* to help unleash the untapped capacity of would be good Samaritan cleanup groups like TU, who are ready and willing to help get this work done.

Lastly, the subcommittee knows well the need to have a hardrock Good Samaritan policy enacted to provide a critical tool for western abandoned mine cleanups. We appreciate the subcommittee's work in previous Congresses to find a solution. Last year a bipartisan group of Senators and diverse stakeholders united around legislation to establish a pilot program that would have facilitated safe, effective abandoned mine cleanups. Unfortunately, this bill did not advance into law before the end of the year and abandoned mines that could otherwise be cleaned up continue to pollute our waters and communities. We are hopeful that in the 118th Congress we will be able to move forward with bicameral legislation and we look forward to further working with the subcommittee to address this issue. It is long past due to enact Good Samaritan legislation into law so that we can get to work across the country cleaning up both coal and hardrock abandoned mines.

Conclusion

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. The Community Reclamation Partnerships bill is an important step toward addressing the impact of abandoned mines in coal country. We urge the Subcommittee to mark up the bill and pass it in the coming months.

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