

**DISCUSSION DRAFT OF H.R. _____,
“COMMUNITY RECLAMATION PARTNER-
SHIPS ACT”**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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**LEGISLATIVE HEARING ON DISCUSSION
DRAFT OF H.R. _____, TO AMEND THE
SURFACE MINING CONTROL AND RECLAMA-
TION 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, AND OTHER
PURPOSES, "COMMUNITY RECLAMATION
PARTNERSHIPS ACT"**

**Wednesday, May 24, 2017
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:12 p.m., in room 1324, Longworth House Office Building, Hon. Paul Gosar [Chairman of the Subcommittee] presiding.

Present: Representatives Gosar, Pearce, Thompson, Tipton, Westerman, Hice, LaHood; Lowenthal, Beyer, and Barragan.

Dr. GOSAR. The Subcommittee on Energy and Mineral Resources will come to order. The Subcommittee is meeting today to hear testimony on the discussion draft of the Community Reclamation Partnerships Act.

Under Committee Rule 4(f), any oral opening statements at the hearing are limited to the Chairman, the Ranking Minority Member, and the Vice Chair. This will allow us to hear from our witnesses sooner, and help Members keep to their schedules. Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record, if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

Without objection, so ordered.

**STATEMENT OF THE HON. PAUL A. GOSAR, A REPRESENTA-
TIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Dr. GOSAR. Today the Subcommittee will consider our discussion draft of the Community Reclamation Partnerships Act. This bill would amend the Surface Mining Control and Reclamation Act of 1977, or SMCRA, to enable states to partner with non-governmental entities to reclaim abandoned mine sites and facilitate acid mine drainage cleanup across the country.

Currently, state reclamation activities are funded solely by fees levied on the coal industry. These fees have resulted in the reclamation of approximately \$4 billion of abandoned mine land, or AML, liabilities.

However, according to the Department of the Interior, over 6,650 AML sites remain, with an estimated remediation cost exceeding \$10.5 billion. These abandoned mines pose threats to the surrounding communities, and prohibit opportunities for further development.

Because these sites were abandoned before the era of modern regulation and there are no current liable parties, the states are responsible for reclaiming these sites and restoring the environmental quality of the surrounding areas. The cost of reclaiming these sites will continue to strain state resources in the coming decades, and the condition of these sites will only worsen over time.

Non-government entities have recognized the need for reclamation in coal communities and are willing to contribute their resources and expertise to address the problem. Unfortunately, liability and regulatory concerns have discouraged them from partnering with states on reclamation projects. This legislation will enable NGO participation in state reclamation programs by minimizing undeserved liability and codifying proven practices established by the state reclamation agencies.

This legislation would recognize non-governmental entities who wish to conduct reclamation projects, including watershed groups, conservation organizations, and industry partners, as "Community Reclaimers." It will allow the state to extend liability protection to these entities, much like they already do for their approved reclamation contractors.

This legislation also addresses common problems that states experience in addressing water pollution at AML sites. One of the most challenging aspects of mine reclamation is the treatment of acid mine drainage discharges. Currently, states are required to fully comply with the Clean Water Act when treating water at AML sites. While the water quality at AML sites can be improved, it will never reach Clean Water Act standards, even with the best water treatment systems in place. As a result, states must choose between risking non-compliance under the Clean Water Act, or foregoing acid mine drainage abatement projects all together.

Some states have addressed this problem by establishing their own guidelines for the treatment of water pollution at AML sites. These state-specific strategies have resulted in successful water treatment projects and a significant reduction in acid mine drainage in several states.

However, these states risk subjecting their programs to suit, due to the lack of any statutory authorization for their water treatment programs. This legislation would statutorily recognize the practice of crafting acid mine drainage treatment strategies in each state.

These strategies must be laid out in the form of a Memorandum of Understanding between the relevant state and Federal agencies and approved by the EPA and Department of the Interior. Community Reclaimers will be able to execute acid mine drainage projects consistent with the approved MOUs in each state.

I would like to note that this legislation does not allow for re-mining in conjunction with Community Reclaimer projects. SMCRA already allows for the regulation of re-mining activities, and this legislation does not in any way amend the existing requirements. Should mining companies choose to serve as Community Reclaimers, they will not be able to conduct mining activity in the course of completing a reclamation project, and they must not have any outstanding SMCRA violations.

Today, we will hear from Mr. Stefanko, Deputy Secretary for the Office of Active and Abandoned Mine Operations at Pennsylvania's Department of Environmental Protection. In his role, Mr. Stefanko is responsible for overseeing the state's Abandoned Mine Reclamation Program. He will discuss his program's experience with allowing non-governmental entities to reclaim AML sites, current challenges in cleaning up acid mine drainage, and the need for Community Reclaimers in states like Pennsylvania.

We will also hear from Mr. Chris Wood, President and CEO of Trout Unlimited. Trout Unlimited is a national organization dedicated to conservation and fisheries restoration that has partnered with several states on abandoned mine land projects. Mr. Wood will discuss the ability of non-governmental entities like Trout Unlimited to serve as Community Reclaimers, and the environmental benefits that these partnerships will yield for communities nationwide.

[The prepared statement of Dr. Gosar follows:]

PREPARED STATEMENT OF THE HON. PAUL A. GOSAR, CHAIRMAN, SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

Today, the Subcommittee will consider a discussion draft of the Community Reclamation Partnerships Act. This bill would amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to enable states to partner with non-governmental entities to reclaim abandoned mine sites and facilitate acid mine drainage cleanup across the country.

Currently, state reclamation activities are funded solely by fees levied on the coal industry. These fees have resulted in the reclamation of approximately \$4 billion of abandoned mine land, or AML, liabilities. However, according to the Department of the Interior, over 6,650 AML sites remain with estimated remediation costs exceeding \$10.5 billion. These abandoned mines pose threats to the surrounding communities and prohibit opportunities for further development. Because these sites were abandoned before the era of modern regulation and there are no current liable parties, the states are responsible for reclaiming these sites and restoring the environmental quality of the surrounding areas. The cost of reclaiming these sites will continue to strain state resources in the coming decades and the conditions of these sites will only worsen over time.

Non-governmental entities have recognized the need for reclamation in coal communities and are willing to contribute their resources and expertise to address the problem. Unfortunately, liability and regulatory concerns have discouraged them from partnering with the states on reclamation projects. This legislation will enable NGO participation in state reclamation programs by minimizing undeserved liability and codifying proven practices established by the state reclamation agencies.

This legislation would recognize non-governmental entities who wish to conduct reclamation projects, including watershed groups, conservation organizations and industry partners, as "Community Reclaimers." It will allow the state to extend liability protection to these entities, much like they already do for their approved reclamation contractors.

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Clean Water Act standards, even with the best water treatment systems in place. As a result, states must choose between risking noncompliance under the Clean Water Act or foregoing acid mine drainage abatement projects altogether.

Some states have addressed this problem by establishing their own guidelines for the treatment of water pollution at AML sites. These state-specific strategies have resulted in successful water treatment projects and a significant reduction in acid mine drainage in several states. However, these states risk subjecting their programs to suit due to the lack of any statutory authorization for their water treatment programs. This legislation would statutorily recognize the practice of crafting acid mine drainage treatment strategies in each state. These strategies must be laid out in the form of a Memorandum of Understanding between the relevant state and Federal agencies and approved by the EPA and Department of the Interior. Community Reclaimers will be able to execute acid mine drainage projects consistent with the approved MOUs in each state.

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Dr. GOSAR. The Chairman now recognizes the Ranking Member for any statement. The gentleman from California is recognized.

STATEMENT OF THE HON. ALAN S. LOWENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Dr. LOWENTHAL. Thank you, Mr. Chairman. The draft of the bill before us today is an interesting and potentially promising tool to help address one of the big questions that confronts the issue of cleaning up abandoned mines. Namely, how can we allow Good Samaritans—people who had nothing to do with causing the pollution—how can we allow them to help with cleaning up these sites?

There is no question that help is needed. Reclaiming all of the remaining abandoned coal mines in this country would cost an estimated \$10 billion.

Reclaiming our abandoned hardrock mines would be even more expensive, with an estimated cost of anywhere from \$20 to \$54 billion. The Gold King Mine incident was just the most visible example of why this immense responsibility needs to be taken on in a serious way, and it needs to be done soon.

Volunteers, whether we call them Good Samaritans, Community Reclaimers, or anything else, will simply not be enough to tackle this problem.

Coal companies, at least, chip in to the Abandoned Mine Land Fund to help address the legacy of centuries of unreclaimed coal

mines. Unfortunately, hardrock mining companies do not contribute to help cover the enormous cost of cleaning up their own legacy of pollution, which are the over half-million abandoned gold, silver, copper, and other mines that each day poison rivers and streams throughout the country with millions of gallons of toxic water containing lead, arsenic, cadmium, and other metals.

The hardrock mining industry has also continually fought efforts to hold them accountable for these sites. That needs to change.

Last Congress, Ranking Member Grijalva and I introduced the Hardrock Mining Reform and Reclamation Act, which, among other things, would require the hardrock mining industry to pony up and pitch in like the coal industry has done. Frankly, that is the only way we are going to make a significant dent in this problem.

Particularly, I raise this, since the Administration has now decided that cleaning up abandoned hardrock mines is not a priority. The President has proposed a cut of nearly \$11 million for the Bureau of Land Management's Abandoned Mine Lands Program, more than half—and I repeat that, more than half—of the budget of that already underfunded program.

Mr. Chairman, I hope that this is an issue that we can look at in more depth this Congress. As for the bill we are discussing today, this is a novel approach to addressing the Good Samaritan issue, and I thank Mr. LaHood for proposing it, and you, the Chairman, for holding a hearing on it. Having Community Reclaimers partner with states under their abandoned mine land programs could potentially provide the liability protections that these Good Samaritans need to undertake in a number of helpful projects.

However, I don't believe it is entirely clear how this bill would work. It appears that the bill would provide a broad waiver for projects that do not meet Clean Water Act standards if there is a Memorandum of Understanding between the state and the Federal Government. Unfortunately, there is very little detail in the bill about what these memoranda would contain. The only requirement seems to be that the Secretary of the Interior and the Administrator of the Environmental Protection Agency find that a memorandum would help facilitate additional work under the state's Abandoned Coal Mine Reclamation Plan.

But there are a lot of ways that we could do that. And it is not clear if there are protections to keep coal companies from using this as a way to re-mine old sites without having to comply with the Clean Water Act.

I understand that is not the intent of this bill, so I hope we can work together, guided by some of the comments of the testimony provided by our witnesses today, to craft something that is bipartisan and that can have a real and lasting positive impact.

Thank you to the witnesses for being here, and I yield back the balance of my time.

[The prepared statement of Dr. Lowenthal follows:]

PREPARED STATEMENT OF THE HON. ALAN S. LOWENTHAL, RANKING MEMBER,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Thank you, Mr. Chairman.

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But there are a lot of ways that you could do that. And it's not clear if there are protections to keep coal companies from using this as a way to re-mine old sites without having to comply with the Clean Water Act.

I understand that isn't the intent of this bill, so I hope we can work together, guided by some of the comments in the testimony provided by our witnesses today, to craft something that is bipartisan and can have a real and lasting positive impact.

Thank you to the witnesses for being here, and I yield back the balance of my time.

Dr. GOSAR. I thank the gentleman. Now I will introduce our witnesses.

First, Mr. Chris Wood, President and Chief Executive Officer for Trout Unlimited.

Mr. Thom Kay, Senior Legislative Representative for Appalachian Voices.

And third, Mr. John Stefanko, Deputy Secretary for the Office of Active and Abandoned Mine Operations, Pennsylvania Department of Environmental Protection.

Let me remind the witnesses that, under our Committee Rules, they must limit their oral statements to 5 minutes. But their entire statement will appear in the hearing record.

Our microphones are not automatic. You will need to press the talk button when you begin your testimony. When you begin, the light on the witness microphone will turn green, and after 4 minutes will turn yellow, subsequently followed by the red light. Summarize your statements from there on, and hopefully keep it to that aspect.

I would like to now recognize Mr. Wood for his testimony.

Good seeing you again, Chris.

STATEMENT OF CHRIS WOOD, PRESIDENT/CHIEF EXECUTIVE OFFICER, TROUT UNLIMITED, ARLINGTON, VIRGINIA

Mr. WOOD. Thank you, Chairman Gosar, Ranking Member Lowenthal, and Subcommittee members. My testimony is on behalf of Trout Unlimited and our 300,000 members and supporters around the country. I want to thank you for inviting us to be here today.

TU's mission is to conserve, protect, and restore trout and salmon fisheries and the watersheds that they depend on. I have often referred to TU as the patron saint of forgotten environmental causes. And our work to clean up abandoned mines, whether they are in the coal fields of Appalachia or hardrock mining lands in the Rocky Mountains, is a testament of that.

[Slide]

Mr. WOOD. As you can see from this map that is on the screen here, abandoned coal mines are a pervasive problem all across the country, not just in Appalachia.

Next slide, please.

[Slide]

Mr. WOOD. The Gold King spill in Colorado several years ago made national news. But the stream on the left is a typical representation, and it is all too familiar from any landowners across Appalachia and the rest of the country. These yellow streams and red streams occur outside of the media's view, but all around the country.

Cleaning up these mines is pretty straightforward. As the picture on the upper right shows, you can run them through these passive treatment systems and constructed wetlands, and the result is that you can recover native species such as the brook trout, down in the lower-right corner. We are quite proud of the fact that in Pennsylvania, because of our work on a watershed called Kettle Creek, we were able to recover over 6 miles of spawning and rearing habitat for brook trout that had been lost for over a century to abandoned mine waste.

Next slide, please.

[Slide]

Mr. WOOD. This map shows what is possible. Kettle Creek, that I just mentioned, is a small part of the West Branch of the Susquehanna watershed, which drains about 20 percent of the Commonwealth of Pennsylvania. The line in red represents the river from the 1980s. If you can't read the chart, essentially the entire river was acidic to one degree or another.

Today, that is not the case. You can see the progress that has been made over the past decades as a result of the partnership between the state, dozens of watershed groups, and organizations like Trout Unlimited.

Much, much more work remains to be done, in spite of the success that we have had on the West Branch. In the West Branch alone, we have over 1,000 miles of acidic streams that need to be treated. These are particularly important for brook trout. And we have over 5,000 miles in the rest of the Commonwealth that are also in need of treatment.

Next slide, please.

[Slide]

Mr. WOOD. This work not only cleans our water, it provides thousands of high-paying, family wage jobs in rural areas. And, of course, it makes the fishing better, which, in turn, drives a significant recreation economy, which everyone benefits from.

We are very grateful, Representative LaHood and Chairman Gosar, for your continued leadership on this issue, and we appreciate the willingness of the authors to allow for some discussion of this bill. These deliberations, we think, will lead to strong bipartisan support for a very, very good draft.

This draft is a significant step in the right direction. It must work well on the ground, of course, and we are looking forward to having a little bit of time to give you more detailed comments from our practitioners in the field. We will offer some additional feedback in the coming days, but we are quite confident that the finished, introduced bill will be worthy of the Subcommittee's strong consideration and eventual approval.

Just three points that we would like to highlight here for the balance of my time.

Number one, we think the bill should consider some process for grandfathering some of the 250 projects that are already ongoing in the state of Pennsylvania through the MOU process.

Number two, we would like to ensure that there is strong public involvement in the development of these MOUs. We think that consent of the people in these areas is really important to getting good, solid projects.

And then, finally, we would like to see qualifying private landowners eligible to become Community Reclaimers in their own right. It was unclear from the draft if that is intended.

Improving the Nation's water quality is a goal that every American shares. We are pleased that the Subcommittee is looking at one of the more vexing water quality problems in the country right now, and we stand ready to work with you to promote clean and fishable waters across the country.

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

[The prepared statement of Mr. Wood follows:]

PREPARED STATEMENT OF CHRIS WOOD, PRESIDENT/CEO OF TROUT UNLIMITED,
ARLINGTON, VIRGINIA

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 cleanup 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 115th Congress discuss including water cleanup 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 3-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.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 \$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.

¹ <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 runoff, 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.”

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 cleanup 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 cleanup 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 cleanup 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.

Cleanup 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.

Last, the Subcommittee knows well the need to have a hardrock Good Samaritan policy enacted to provide a critical tool for western abandoned mine cleanup. 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.

Dr. GOSAR. Thank you very much.

The Chair now recognizes Mr. Kay for his 5 minutes of testimony. Thank you.

STATEMENT OF THOM KAY, SENIOR LEGISLATIVE REPRESENTATIVE, APPALACHIAN VOICES, BOONE, NORTH CAROLINA

Mr. KAY. Thank you, Chairman Gosar, Ranking Member Lowenthal, and members of the Committee, for the opportunity to testify on the discussion draft of the Community Reclamation Partnerships Act. I am the Senior Legislative Representative for Appalachian Voices, an organization working to protect the land, air, and water of central and southern Appalachia for future generations, and to one day see the region upheld as a national model of a vibrant, just, and sustainable economy.

Throughout Appalachia, there is an enormous need to restore former coal mine lands. Abandoned mine lands from before the passage of SMCRA and mines that have been bond-forfeited more recently put large burdens on state agencies and the public. State agencies work hard to treat existing problems, but they simply do not have the resources necessary to complete the reclamation of millions of acres of land and thousands of miles of streams anytime in the near future.

Virginia, for example, has over \$400 million in remaining AML costs, but only receives in the ballpark of \$5 million per year in AML grants. In order to build wealth and prosperity in rural communities, clean water is absolutely essential. Additional resources are clearly needed for states to address decades worth of mining pollution.

Cleaning up mine sites has both environmental and economic benefits, along with creating immediate reclamation jobs and drawing tourism to improving the land and protecting fish and wildlife. Cleaning up mining pollution can help improve the health of local communities.

Appalachian communities have demonstrated growing excitement about the lasting benefits associated with mine reclamation. Between the AML pilot program and the progress of the RECLAIM Act, communities are envisioning new, long-term economic opportunities that can be combined with reclamation. Pairing such efforts with passage of the Community Reclamation Partnerships Act could result not only in more cleanup, but also spur innovative projects in coal communities.

It is my understanding that the bill is intended to encourage organizations to take on some of the heavy burden of treating water pollution, while also preventing mining companies from escaping any of the responsibilities they have under current law. Most importantly to Appalachian Voices is that this bill does not allow companies to conduct any mining with any reduction in standard permitting requirements under the Clean Water Act or SMCRA.

In certain cases, incidental coal removal can reduce the overall cost of site reclamation. This should be allowed if reclamation leaves previously polluted streams cleaner than they were before, but we see no reason for any company to receive extra liability protection for re-mining.

We do not believe there is an intention to allow companies to carry out re-mining projects under this bill; but, as changes are made through the legislative process, I urge the Committee to ensure no loopholes are created that would allow any company to abuse the liability waivers granted under this Act in order to obtain new surface mining permits at an AML site.

Included in the bill's definition of a Community Reclaimer are sensible restrictions that would prohibit companies with unfulfilled reclamation obligations or outstanding violations from qualifying. We agree with that decision, but defining such persons or companies can be quite difficult. In many instances, a parent company may own as many as several dozen subsidiary mining companies.

For example, Alpha Natural Resources owns at least 22 coal companies currently registered with the West Virginia Secretary of State. These companies all list the same manager, organizer, and office address, yet the state of West Virginia routinely treats them as individual companies. We suggest updating the definition to ensure that no one can get around the sensible restrictions in the bill by acting through a subsidiary.

Last, there is a provision that requires a notice be provided to the public before the project is initiated. That is important, but should go further in providing an opportunity for people to express concerns and have them addressed by the state or a Community Reclaimer. After all, a notice in the mail can raise a lot more questions than it answers.

Regardless of how beneficial a project might be, neighbors may raise legitimate issues. They deserve the chance to share their thoughts with the Community Reclaimer and the state, and to have their concerns addressed in a timely manner.

As the Community Reclamation Partnerships Act moves forward, we hope you will consider our thoughts and ensure that re-mining is not considered eligible for liability waivers, and that there is proper engagement with local communities. If the Committee is able to sufficiently address those issues while providing non-governmental entities the liability coverage they need to help clean up Appalachian streams, then we would urge Congress to pass this bill quickly.

Thank you for your time, and I look forward to your questions.
[The prepared statement of Mr. Kay follows:]

PREPARED STATEMENT OF MR. THOM KAY, SENIOR LEGISLATIVE REPRESENTATIVE,
APPALACHIAN VOICES

Thank you Chairman Gosar, Ranking Member Lowenthal, and members of the Committee for the opportunity to testify on the discussion draft of the "Community Reclaimers Partnership Act."

I am the Senior Legislative Representative for Appalachian Voices, an organization working to protect the land, air, and water of central and southern Appalachia for future generations and to one day see the region upheld as a national model of a vibrant, just, and sustainable economy.

THERE IS AN ENORMOUS BURDEN ON STATE AGENCIES TO DEAL WITH
EXISTING POLLUTION

Throughout Appalachia, there is an enormous need to restore former coal mine lands. Mined land that existed prior to the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), known as Abandoned Mine Land (AML), and mines that have been bond-forfeited more recently put large burdens on state agencies and the public. State agencies work hard to treat existing problems, but they simply do not have the resources necessary to complete the reclamation of millions of acres of land and thousands of miles of streams anytime in the near future. Virginia, for example, has over \$400 million in remaining AML costs, but only receives in the ballpark of \$5 million per year in AML grants. While distribution totals may change once the AML program is reauthorized, there is no reason to believe sufficient funds will all of a sudden become available.

The decline of the coal industry over the last 5 years has led to a staggering number of bankruptcies and associated bond forfeitures. SMCRA was supposed to address this issue through bonding; however, bonding programs in central Appalachian states remain insufficient to deal with the industry downturn. In many cases, bonds at individual mines are insufficient to cover reclamation costs, especially when long-term water treatment becomes necessary. Many companies have been allowed to self-bond, in which states rely on a “too big to fail” approach, even as many of the largest companies have gone bankrupt. In other cases, pool bond programs have not accounted for multiple forfeitures at once. While these situations would not be directly impacted by this bill, they are important to consider because they place an additional burden upon state agencies. Once a mine is bond-forfeited, its reclamation becomes the responsibility of the state.

CLEAN UP PROVIDES ECONOMIC AND ENVIRONMENTAL BENEFITS

In order to build wealth and prosperity in rural communities, clean water is absolutely essential. Additional resources are clearly needed for states to address decades’ worth of mining pollution.

Cleaning up mine sites can improve both surface water and groundwater, which has clear environmental and economic benefits. Along with creating immediate reclamation jobs and drawing tourism through improving the land and protecting fish and wildlife, cleaning up mining pollution can help improve the health of communities. Stream and well water contamination are both widespread throughout central Appalachia. Many rural communities do not have easy access to municipal water when their well water becomes contaminated. Some common contaminants, such as iron, are a nuisance—staining clothes and appliances orange. Other common contaminants, like manganese, have potential effects on childhood development that are only beginning to be understood. Though thankfully more rare, some contaminants, such as arsenic, are known carcinogens. Appalachian Voices has found all three of these contaminants, as well as many others, in private well water throughout the region.

Appalachian communities have demonstrated growing excitement about the lasting benefits associated with mine reclamation. Between the AML Pilot Program and the progress of the RECLAIM Act (H.R. 1731), communities are envisioning new, long-term economic opportunities that can be paired with the reclamation of our country’s Abandoned Mine Lands. Pairing such efforts with passage of the Community Reclaimer Protections Act could result not only in more cleanup, but also spur innovative projects in coal communities, many of which continue to struggle with the decline of coal mining jobs.

THE BILL SHOULD NOT ALLOW ANY COMPANY TO ABUSE THE LIABILITY WAIVERS
FOR RE-MINING

It is my understanding that the bill is intended to allow for and encourage non-governmental organizations to take on some of the heavy burden of treating water pollution caused by coal mining before 1977, while also preventing mining companies from escaping any of the responsibilities they have under current law. Most importantly to Appalachian Voices is that this bill does not allow companies to conduct any mining with any reduction in standard permitting requirements under the Clean Water Act, SMCRA, or other applicable law.

We understand that, in certain cases, incidental coal removal can reduce the overall cost of site reclamation and does not further threaten water resources. This type of activity should be allowed if reclamation leaves previously polluted streams cleaner than they were before. But we see no reason for any company to receive extra liability protection for re-mining.

We do not believe there is an intention to allow companies to carry out re-mining projects under this bill, but it is possible, perhaps even likely, that changes to the existing language of this discussion draft will occur. I urge the Committee to ensure no loopholes are created that would allow any company to abuse the liability waivers granted under this act in order to obtain new surface mining permits at an AML site.

DEFINING A "COMMUNITY RECLAIMER"

While one solution to the issue of coal companies abusing the bill is to simply prohibit any such company from qualifying as a "Community Reclaimer," I understand that the authors would like to give companies that opportunity. Given the experience and resources mining companies bring to the table, that decision is not unreasonable. Included in the bill's definition of a "Community Reclaimer," however, are sensible restrictions that would prohibit companies with unfulfilled reclamation obligations or outstanding violations from qualifying. We agree with that decision, but defining such persons or companies can be quite difficult.

In many instances, a parent company may own as many as a several dozen subsidiary mining companies. These corporate structures often shield each individual company, as well as the parent company, from protective measures within SMCRA intended to prevent widespread pollution issues. According to the Office of Surface Mining Reclamation and Enforcement, "section 510(c) of SMCRA prohibits issuance of a new permit to any applicant who owns or controls mining operations having unabated or uncorrected violations anywhere in the United States until those violations are abated or corrected or are in the process of being abated or corrected to the satisfaction of the agency with jurisdiction over the violation." State agencies routinely issue permits to subsidiary companies even when other subsidiaries have outstanding violations.

For example, citizens living around Coal River Mountain in West Virginia recently objected to the issuance of several new mountaintop removal permits in their area. Republic Energy, Inc., a subsidiary of Alpha Natural Resources, applied for the permits. Republic's newest permit for the Long Ridge Mine was issued over citizens' objection, even when Alex Energy, another Alpha subsidiary, had outstanding reclamation schedule violations at the time. Alpha Natural Resources owns at least 22 coal companies currently registered with the West Virginia Secretary of State. These companies all list the same manager, organizer, and office address. Alpha Natural Resources and its subsidiary have had numerous recent issues in West Virginia, including ongoing violations, coal slurry spills, and allegations of fraud, yet the subsidiaries are routinely treated as individual companies and granted leniency when it comes to permitting decisions and enforcement actions.

Due to the prevalence of permitting and enforcement issues among subsidiary companies, the language defining "Community Reclaimer" should be strengthened. Currently, the definition includes, "Is not a past or current owner or operator of any site with ongoing reclamation obligations or subject to violations listed pursuant to section 510(c) of this Act (30 U.S.C. 1260(c))." We suggest updating the definition to read "Is not a past or current owner or operator, *and does not share a common owner or parent company with a past or current owner or operator*, of any site with ongoing reclamation obligations or subject to violations listed pursuant to section 510(c) of this Act (30 U.S.C. 1260(c))."

COMMUNICATIONS WITH THE PUBLIC

Last, there is a provision in this act that requires a notice be provided to "adjacent and downstream landowners and the public before the project is initiated." That is important, but should go further in providing each of the listed entities the opportunity to express concerns and have those concerns addressed by either the state or the Community Reclaimer. After all, a notice in the mail can raise a lot more questions than it answers.

Regardless of how beneficial a project might be, neighbors may raise legitimate issues. They deserve an accessible and clear method of sharing their thoughts with the Community Reclaimer and the state and to have their concerns addressed in a timely manner.

To be perfectly clear, we are not advocating for the creation of a bureaucratic barrier that could serve to prevent good projects from moving forward, nor do we want to allow any person from stopping projects without cause. Instead, we think the bill could be improved by making a clear requirement that the public should be given a reasonable opportunity to express concerns and have those concerns addressed.

In doing so, it should also be clarified in the bill which entity is responsible for communication with the public from a project's inception to completion: the state or

the Community Reclaimer. It appears that the responsibility falls to the Community Reclaimer, but clarification would be helpful.

CONCLUSION

As the Community Reclaimer Protection Act moves forward, we hope you'll consider our thoughts and ensure that re-mining is not considered eligible for liability waivers and that local communities are given an opportunity to voice concerns and have them addressed. If the Committee is able to sufficiently address those issues while providing non-governmental entities the liability coverage they need to help clean up Appalachian streams, then we would urge Congress to pass this bill quickly.

Dr. GOSAR. I thank the gentleman.

The Chair now recognizes Mr. Stefanko for his testimony. Thank you.

**STATEMENT OF JOHN STEFANKO, DEPUTY SECRETARY FOR
THE OFFICE OF ACTIVE AND ABANDONED MINE OPER-
ATIONS, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION, HARRISBURG, PENNSYLVANIA, ON BEHALF OF
THE INTERSTATE MINING COMPACT COMMISSION AND
NATIONAL ASSOCIATION OF ABANDONED MINE LAND
PROGRAMS**

Mr. STEFANKO. Thank you, Mr. Chairman and members of the Committee. I am appearing here today on behalf of the Commonwealth of Pennsylvania, the Interstate Mining Compact Commission, and the National Association of Abandoned Mine Land Programs. We appreciate the opportunity to share our perspective on the status of the abandoned mine drainage treatment efforts, and to express our support for this much-needed amendment to SMCRA.

Acid mine drainage, casually known as AMD, is a massive and pervasive problem. In Pennsylvania alone, over 5,600 miles of streams are impacted by AMD pollution from abandoned coal mines. The impacts to the health, environment, and economic livelihoods of our state's communities are felt every day, and the story is similar for historic coal communities throughout the country.

The AML program, under SMCRA, gives states the resources they need to counteract coal AML problems within their borders, including impacts to water resources. In an era of increasing economic hardship for coal field communities, this work has become more important than ever. But due to the problematic overlap in Federal law applicable to treatment of these sites, the AML programs are not being allowed to fully realize their mission.

Coal AML sites are generally handled exclusively through SMCRA, but in cases where the Clean Water Act potentially applies, the state's responsibilities are generally unclear. And where they are clear, they are typically not practical, and this is having a chilling effect on the state's efforts to address AMD.

The Clean Water Act, as a cornerstone of Federal environmental law, is intentionally very strict in regulating impacts to our Nation's water resources. But as an unintended consequence of the strict design, its requirements simply do not comport well with the realities of treating AMD from abandoned mines. These sites are,

by definition, already polluted and, therefore, do not meet the Clean Water Act standards at the time treatment begins.

Furthermore, the nature of AMD pollution is such that, in many cases, no amount of remediation work could achieve these standards fully in any case. Even so, joint and several liability under the Clean Water Act means any party who affects such a site becomes permanently responsible for treating the discharge to meet full standards.

As a result, the states and their partners are exposed to significant, undeserved potential liability in the due course of their work, even where the project is authorized under SMCRA, conducted properly, and improving water quality.

The key to resolving these issues is bringing clarity and practicality to the responsibilities borne by the AML programs as they conduct AMD projects. The bill before the Committee today—or discussion bill—would accomplish that goal by setting an established process for states to work with the relevant government authorities to outline a clear, achievable strategy for AMD water treatment under SMCRA. This will result in more prevalent and effective AMD water treatment work by the state AML programs, and more effective overall implementation of Federal law with respect to these sites.

As much as these obstacles to the AMD treatment work can strain and complicate state efforts, circumstances are even worse for the state's potential partners. These groups tend to have limited sources of funding, often in the form of discreet grants, and are, therefore, all the more vulnerable to the risks of undeserved liability.

Pennsylvania recognized long ago that with the availability of these voluntary efforts, many of the state's abandoned mine discharges would be eliminated or improved at little or no cost to the Pennsylvania taxpayer, if only the potential for undeserved liability could be addressed.

To that end, Pennsylvania enacted its Environmental Good Samaritan Act of 1999, under which 79 AMD treatment projects have been undertaken in various partnerships among the Commonwealth. While these projects often do not strictly adhere to Clean Water standards, they nevertheless significantly improve water quality in receiving streams, the aggregate effect of which produces drastic improvements in overall health of the greater watershed at a comparatively low cost.

Pennsylvania's program has enabled these projects to occur without risk of undue liability under state law, but great risks still remain for the Commonwealth and their partners under Federal law, and still more projects could be pursued if not for that fact.

The bill will allow the state-level program in Pennsylvania to achieve its full potential, and will provide the mechanism for other states to follow the successful model, and to enhance our own AMD treatment. The specter of undeserved liability under current circumstances constrains the state's efforts under SMCRA, and deters motivated, well-intentioned volunteers from assisting in that work, which serves only to prolong the environmental, social, and economic harm these sites represent.

With this bill, Congress has the opportunity to restore SMCRA's role in AMD water treatment, enable the state AML programs and their partners to make meaningful progress in restoring our watersheds, and, in doing so, put an important piece of coal country's future into place. Thank you.

[The prepared statement of Mr. Stefanko follows:]

PREPARED STATEMENT OF JOHN STEFANKO, DEPUTY SECRETARY, ACTIVE AND ABANDONED MINE OPERATIONS, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, ON BEHALF OF THE COMMONWEALTH OF PENNSYLVANIA, THE INTERSTATE MINING COMPACT COMMISSION, AND THE NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS

INTRODUCTION

Good Morning Mr. Chairman and members of the Committee. My name is John Stefanko and I serve as the Deputy Secretary for Active and Abandoned Mining Operations within the Pennsylvania Department of Environmental Protection. I am appearing today on behalf of the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs, two multi-state governmental organizations that represent the natural resource and environmental protection interests of their 30 member states (and in the case of NAAML, three Indian tribes).

We appreciate the opportunity to share our perspectives on the current status of abandoned mine drainage water treatment efforts and to express our support for this much-needed amendment to the Surface Mining Control and Reclamation Act (SMCRA).

In enacting the Abandoned Mine Lands (AML) Program under SMCRA, Congress sought to address a very difficult problem. Legacy coal mining sites have enduring impacts on public health and the environment; but because the mining occurred so long ago and the coal companies that conducted that mining are long since defunct, no known party exists with reclamation obligations for these sites under any state or Federal law. Put simply: abandoned mines are everyone's problem but no one's responsibility.

SMCRA provides AML-impacted states the resources and authority they need to counteract the massive and costly AML problems within their borders. The state AML programs have made significant progress since the Act's passage, but much remains to be done, in particular regarding waters impacted by abandoned mine drainage (AMD). In Pennsylvania alone, there are an estimated 5,600 miles of streams impaired by AMD.¹

Congress clearly intended the mission of the SMCRA AML program to encompass mine drainage-impacted water treatment work,² but due to problematic overlap in Federal Environmental Law applicable to such water pollution, the AML programs are not being allowed to fully realize that mission. As a result of the significant, undeserved liability faced by states and their AML partners under Federal Law, even where an AMD project would improve water quality, many potential projects are left sitting on the shelf, and many of the states' potential partners are left sitting on the sideline. With the bill before the Committee today, this paralyzing ambiguity can be clarified and more effective overall implementation of Federal Environmental Law can be achieved.

In an era of increasing economic hardship for coalfield communities throughout the country, the state AML programs' work has become more important than ever. As the RECLAIM Act (H.R. 1731) before the Committee last month indicates, the AML programs are not only steadfast defenders of our coalfield communities' health, safety, and environment, but are also key contributors to economic revitalization efforts.

The water treatment work conducted by the state AML programs and their partners is particularly vital to economic revitalization. Clean, unpolluted water supplies and recreational waterways are foundational pieces of the new economic future for coal country that Congress seeks to build. Meanwhile, AML impacts like water pollution only worsen over time, and the resources available or that will become available to the state AML programs under SMCRA for their work, and in particular for water treatment, are significantly less than what is needed. Allowing the state AML programs to fulfill SMCRA's role in treating water impacted by aban-

¹ 2016 Pennsylvania Integrated Water Quality Monitoring and Assessment Report.

² Surface Mining Control and Reclamation Act of 1977, Section 101(h).

doned mines and bringing the resources and passion available from the states' AML partners to bear on this massive and intractable problem is critical for the future of coal country. With the bill before the Committee today, Congress has the opportunity to achieve those ends and put an important piece of that future into place.

AMD WATER TREATMENT AND THE CLEAN WATER ACT

The environmental decade of the 1970s brought sweeping changes to the way that water quality is regulated in the United States. Foundational environmental laws like SMCRA and the Federal Water Pollution Control Act (Clean Water Act) helped to clean up our waterways and safeguard the health of our citizens and environment, and the country is undoubtedly a better place as a result. It is therefore a great irony that these laws, which were meant to facilitate water quality, now stand in the way of water quality improvements at AMD sites.

The Clean Water Act, as a cornerstone of Federal Environmental Law, is intentionally very strict in the restrictions placed on and the penalties potentially assessed against those who impact our Nation's water resources. As an unintended consequence of that strict design, and in particular its purposefully stringent and inflexible standards for water treatment, Clean Water Act requirements do not comport well with the realities of AMD treatment.

With regard to this issue, John Whitaker, a White House staffer during the Nixon administration who played an integral role in the passage of the Clean Water Act, recalls the following:

*"When I and other White House staffers responsible for environmental initiatives during the Nixon administration recommended to the President new water pollution control strategies for congressional consideration, our focus was primarily on sewage treatment and industrial effluent, not the acid mine drainage problems from abandoned mines. We should have had more foresight . . . We did not envision at the time that the day would come when the zero discharge provision would prevent Good Samaritans from cleaning up acid mine drainage . . ."*³

This dilemma has been confirmed by the Environmental Protection Agency on many occasions, and is summarized well by the following quote from an EPA Administrator's testimony before Congress in 2006:

*"Under the CWA, a party may be obligated to obtain a discharge permit which requires compliance with water quality standards in streams that are already in violation of these standards . . . Yet, in many cases, the impacted water bodies may never fully meet water quality standards, regardless of how much cleanup or remediation is done. By holding Good Samaritans accountable to the same cleanup standards as polluters or requiring strict compliance with the highest water quality standards, we have created a strong disincentive to voluntary cleanups. Unfortunately, this has resulted in the perfect being the enemy of the good."*⁴

The crux of the problem is that the Federal statutory paradigm for treating AMD-impacted water is not well-suited to the unique characteristics of these sites. The fundamental issue with AMD treatment is that impacted waterways are by definition already impaired, and in the case of abandoned mines, the originators of the pollution have long since gone out of business. Even so, due to joint and several liability under the Clean Water Act, any party who re-affects an AMD-impacted site risks being held permanently responsible for fully eliminating the existing discharge, even where the pollution is the result of legacy mining, the project is significantly improving water quality, the party in question has no connection to the pollution, and no recklessness or negligence is exhibited.

The EPA has acknowledged and attempted to mediate the conflict between AMD treatment and the Clean Water Act in the past, but the Agency's efforts have not meaningfully facilitated progress. The EPA's guidance memoranda of 2007⁵ and

³"Cleaning Up Abandoned Hardrock Mines In The West: Prospecting for a Better Future"—Limerick, Ryan, Brown, and Comp, Center for the American West.

⁴Benjamin H. Grumbles, Assistant Administrator for Water, U.S. Environmental Protection Agency, Testimony before the Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, March 30, 2006, pp. 2–3.

⁵"Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans," June 6, 2007.

2012⁶ regarding “Good Samaritan” involvement in such projects, and the “comfort letters” issued by the Agency pursuant to that approach, have, for reasons which will be discussed further below, unfortunately led to very few additional projects being undertaken.

The obstacles posed by the Clean Water Act to the treatment of AMD-impacted water have significantly slowed progress with such projects throughout the country and efforts to rectify the issue have been underway for over 20 years. While the need for resolution of this issue has been widely agreed upon for some time, the specifics of the ideal solution have long been debated—and it is clear that debate is stalling water treatment work that our coalfield communities desperately need.

While the issue is typically discussed in the context of hardrock AML (mainly due to the absence of a dedicated national hardrock AML program, which accentuates the need to facilitate those efforts) current circumstances also strongly disincentivize AMD treatment at coal AML sites, even where conducted under SMCRA. IMCC and NAAML strongly support efforts to facilitate much-needed hardrock AML work through Good Samaritan legislation, as well as the enactment of a national hardrock AML program akin to the coal AML Program under SMCRA, and we intend to continue our work with Congress and affected stakeholders to support the development of legislation to those ends. In the meantime, the bill before the Committee today presents a comparatively simple path to making meaningful progress with a significant portion of the country’s AMD-impacted water resources through the existing coal AML Program.

OBSTACLES TO AMD WATER TREATMENT UNDER SMCRA TITLE IV

Under the SMCRA AML Program, Congress has already established a system to contend with water pollution resulting from AMD at abandoned coal mines, which was clearly intended to become the primary mechanism by which these sites are handled under Federal law.

As defined by SMCRA Title IV, lands and waters eligible for state AML projects are confined to those for which “no reclamation obligation exists under state or other Federal Laws,” which is essentially to say that no party with responsibility for the pollution is known to exist. Essentially, if these sites were subject to existing Clean Water Act, CERCLA, or other Federal liability, they would not be eligible under SMCRA Title IV in the first place, and thus it is generally understood that other Federal laws potentially relevant to abandoned AMD pollution are not necessary for AML sites listed and treated under the auspices of SMCRA.⁷

SMCRA eligible AML sites can involve discharges of AMD, but in the absence of any liable party with respect to the site, there are generally not the means available to treat the site under other Federal environmental programs. Accordingly, the status quo is that SMCRA Title IV has served as the primary mechanism to treat AMD resulting from eligible coal AML sites. With SMCRA being specifically aimed at this sub-group of uniquely situated, abandoned discharges, and Federal and state efforts under CERCLA and the Clean Water Act being generally targeted at, and often overwhelmed with, other cleanup activities, this arrangement is reasonable and has worked well.

While the above generally holds true for coal AML work, the Clean Water Act’s relationship with AML work has become a special case. Despite the fact that Title IV eligible sites are not subject to *existing* Clean Water Act liability and that the handling of Title IV eligible sites with AMD-impacted water are generally deferred to the SMCRA AML programs, the act of constructing, operating, or otherwise affecting a mine drainage treatment system or other point-source discharge carries the risk of exposure to liability with respect to the discharge under the Clean Water Act, as well as responsibility to comply with Clean Water Act Sec. 402 and obtain an National Pollutant Discharge Elimination System (NPDES) permit. For the reasons explained above, this risk has proven very problematic.

SMCRA Title IV Section 405(l) is intended to allow states with approved AML programs to proceed with their efforts unimpeded by unnecessary liability under Federal Law—but this section only applies with respect to potential *liability* under such laws, as opposed to *compliance* with those laws.⁸ While that distinction is generally immaterial to the states’ AML work vis-à-vis other relevant Federal Law, since as explained above, there is generally no cause for such responsibility at Title IV eligible sites, Section 413(d) of SMCRA specifically requires that treatment

⁶ Clean Water Act Sec. 402 National Pollutant Discharge Elimination System (NPDES) Permit requirements for “Good Samaritans” at Orphan Mine Sites, Dec. 12, 2012.

⁷ House Report 101–24, to accompany the Abandoned Mine Reclamation Act of 1989, pg. 37.

⁸ Abandoned Mine Land Reclamation Program; Limited Liability for Noncoal Reclamation by Certified States and Indian Tribes, 80 Fed. Re. 24 (February 5, 2015).

systems constructed and operated by the states under SMCRA fully comply with the Clean Water Act. AMD is generally understood to be defined as a non-point source and would therefore not generally be subject to NPDES requirements even given the requirement in 413(d), but recent court decisions have created a different expectation.

Under current circumstances, an AMD treatment system may be considered to “convey” a polluted water source and therefore in fact to be a point-source discharge, even where the system is actually reducing pollution loading.⁹ The courts have also created an expectation that states and volunteer groups affecting an existing source of water pollution may be held as “operators” under the Clean Water Act and compelled to comply with full requirements of and liability associated with an NPDES discharge,^{10, 11} even where those requirements are clearly unreasonable and the liability clearly undeserved with respect to the parties in question. These developments have exacerbated the concern surrounding the potential for untenable consequences for well-intentioned and well-performed cleanup efforts at AMD sites.

At the center of this concern is the simple fact that, as noted above, NPDES permits are not well-suited for treating AMD-impacted water. In many instances, strict compliance with water quality standards imposed under Section 402 of the CWA is not logistically possible or technically practical. Even where achieving compliance is possible, the diminishing return on funding needed to achieve that standard renders the pursuit uneconomical and imprudent given limited resources and the prevalence of other critical AMD water treatment priorities. These realities of AMD treatment have led many state AML programs to adopt an approach that attempts to maximize the number of discharges that receive treatment to the highest standard practicable, in particular such that they support biological and other functions of the water resource. While these projects often do not strictly adhere to NPDES water quality based effluent requirements, they nevertheless significantly improve water quality in the receiving streams, the aggregate effect of which produces drastic improvements in overall health of the greater watershed at a comparatively low cost.

The network of pollution-reducing active and passive water treatment systems employed by many state AML programs under this approach has led to great strides in restoring AMD-impacted watersheds, as well the community health and livelihoods which depend on those watersheds; but as a result of these systems’ inability to comply fully with the Clean Water Act as described above, the state AML programs risk exposure to daunting undeserved liability (and therefore risk to their past and future progress with other AMD priorities) whenever they undertake such projects. These circumstances continue to discourage if not totally preclude many states’ (and even more so their potential AML partners’) ability to treat water under their approved SMCRA AML programs; and even in states that have been able to proceed with some amount of water treatment work, these circumstances have been a severely complicating factor.

To summarize, Title IV-eligible coal AML sites are generally handled exclusively through the auspices of SMCRA, but in cases where the Clean Water Act does or seems potentially to apply based on certain relevant legal decisions, the states’ responsibilities under Section 402 of the Clean Water Act are generally unclear, and where they are clear, are typically impracticable.

FACILITATING AMD TREATMENT WORK UNDER THE COMMUNITY RECLAMATION PARTNERSHIPS ACT

As noted above, the EPA has attempted to resolve this issue administratively through Guidance memoranda, which essentially outline conditions under which the Agency will waive its enforcement authority under the Clean Water Act (i.e. forego applying undeserved penalties and unreasonable compliance responsibilities) for mine drainage treatment projects conducted under certain conditions. In similar

⁹ *Environmental Defense Fund, Inc. v. East Bay Municipal Utility District*.

¹⁰ Pursuant to the Fourth Circuit Court of Appeals decision in *West Virginia Highlands Conservancy v. Huffman* to designate water treatment facilities as point-source discharges, West Virginia must now obtain CWA permits for bond forfeiture sites. There have been concerns that this ruling could be extended to AML projects being undertaken by the states and tribes under SMCRA.

¹¹ It is important to note that AML reclamation is handled separately and distinctly from bond forfeiture sites, and that these sites, and any companies experiencing bond forfeiture, would not be eligible for participation under the bill before the Committee today.

fashion, many state AML programs have reached understandings¹² with the EPA and/or their state NPDES authority counterparts to outline practicable levels of compliance with NPDES for their respective AML programs based on the main goal: improving water quality.

The primary remaining obstacle is that, despite assurances and understandings described above, these projects are still potentially subject to citizen suit liability under the Clean Water Act. Due to the requirement in 413(d), and the developments in relevant legal precedence described above, the states' efforts may be deemed non-compliant by the courts where they do not fulfill NPDES requirements. This means that even where these projects are conducted under SMCRA, condoned by the EPA and/or state NPDES authority, and are improving water quality by reducing pollution loading, a state could still be assessed liability and compelled to take immediately required, expensive, tax-funded action to return a given site to an impracticable condition, which is ultimately what the states must avoid.

The key to resolving this issue is bringing clarity and practicality to any Clean Water Act compliance responsibilities borne by the states as they conduct AMD water treatment under SMCRA. This bill would accomplish that goal by setting an established, thorough process by which state AML programs can work with their NPDES authority counterparts (contingent on EPA approval) to outline a clear, achievable, statutorily-sanctioned strategy for their water treatment work. This approach will ensure that the purposes of the Clean Water Act are upheld while providing necessary assurance that such efforts will be considered compliant with the Clean Water Act in the future, and can be pursued free from concerns with liability stemming from the unreasonable, unhelpful aspects of the Clean Water Act's application to AMD treatment work.

The amendment proposed by the bill represents a genuine attempt to find the appropriate middle-ground between SMCRA and the Clean Water Act for AMD projects, and ensure that the purposes of the Clean Water Act are fulfilled through the state AML programs' efforts. These improvements will result in more prevalent and effective AMD water treatment work by the state AML programs, and more effective overall implementation of Federal Law with respect to these sites. Without such improvements, the ambiguity remaining in (and certain other prohibitive aspects of) the Law's application to abandoned AMD pollution will continue to constrain and delay the states' progress under SMCRA.

REMOVING OBSTACLES TO PARTNERSHIPS FOR AMD TREATMENT WORK

The obstacles to AMD treatment work described above constrain and complicate the states' efforts significantly, but for the states' would-be partners in those efforts, the impediment is much worse. Now more than ever, the states and their AML-impacted communities could use the assistance of their passionate and capable Community Reclaimer partners, but current circumstances unfortunately heavily disincentivize that possibility.

Much like the state AML programs themselves, their partners face the potential for devastating undeserved liability in the due course of their AMD treatment work, even where the group in question has no connection to the site and the project is significantly improving water quality. What's more, the states' partners tend to have limited sources of funding, often in the form of discrete grants, and are therefore all the more vulnerable to the risks of undeserved liability and infeasible compliance responsibility. If these groups are not completely certain of their responsibilities and potential liability as a result of conducting, participating in, or funding a project, and that those responsibilities will be practicable, they will have little choice but to forego those activities or risk lethal impacts to the financial health of their organization.

Pennsylvania recognized long ago that with the availability of these volunteer efforts and advances made in our understanding of mine drainage, many of the state's abandoned coal mine AMD discharges could be eliminated or improved at little or no cost to the Pennsylvania tax-payer if only the potential for undeserved liability could be addressed. To that end, Pennsylvania enacted its Environmental Good Samaritan Act of 1999,¹³ under which 79 AMD treatment projects have been undertaken in various partnerships between the Commonwealth, local governments and municipal authorities, individual community supporters, corporations, water-

¹²For example, under such agreements, the states may not be expected to achieve full water quality compliance where infeasible, may not be required to sample for the full range of constituents generally applicable, and may have their responsibility otherwise proscribed based on conditions at a given site and the state's staffing and financial capability—but for reasons described below, these agreements provide limited assurance to the AML programs.

¹³Title 27 Pennsylvania Consolidated Statutes Annotated Sections 8101–8114.

shed associations, and conservancies. These projects are spread among 20 counties and 53 distinct groups, and the majority of these projects are active today. State-level liability protections have enabled these projects to occur without risk of undue liability under state law, but risks remain for the Commonwealth and their partners under Federal law, and still more projects could have been pursued if not for the remaining specter of liability.

Much like the proposal in the bill before the Committee today, projects eligible under the EGSA must abate water pollution resulting from abandoned mine lands and eligible participants must meet certain conditions demonstrating that they and the project are worthy of liability protections offered by the program. A key component of the program's success is its reliance on the state AML program's long-standing expertise in their field. Under the EGSA, all activities related to a given project proceed under the guidance and approval of the Pennsylvania Department of Environmental Protection (PADEP), which utilizes its expertise and long resumé of successful water treatment projects to appropriately adjust requirements to match the scale and complexity of the proposed project and to ensure that only well-conceived projects move forward. The program proposed by the bill before the Committee today reflects the structure of the EGSA, and should successfully integrate its advantages.

Pennsylvania's experience in the almost 20 years since the passage of the EGSA demonstrates that there are countless opportunities for Community Reclaimers to assist the AML programs, especially in the treatment of AMD-impacted water. The Commonwealth and its partners' work under the EGSA provides a proof of concept for the beneficial, responsible participation of such groups in the AML programs' work as well as for the bill before the Committee today.

FACILITATING AMD TREATMENT WORK UNDER THE COMMUNITY RECLAMATION PARTNERSHIPS ACT

This bill would build on the proven program in SMCRA, take the lessons of the successful program in Pennsylvania, and responsibly confer with relevant authorities, to establish a distinct process for unnecessarily marginalized groups to work with the state AML programs as partners.

The critical components of this approach are the states' assumption of ultimate responsibility for the project under Federal law, the strong definition of Community Reclaimer, and the requirement that these projects be conducted pursuant to a state's approved Reclamation Plan, including where applicable the jointly developed strategy for AMD treatment as developed under Section 405(m) of the proposed amendment.

The states' assumption of responsibility under Section (n)(1)(v) of the bill will ensure that ultimate care of affected sites will be accounted for in accordance with the State Reclamation Plan. It will also allow the states to provide the necessary assurances to prospective partners that they will not be assessed Federal liability outside the terms and conditions of the State Reclamation Plan and the state's agreement with the partner as described in (n)(1)(v). It is interesting to note that AML contractors utilized under the conventional AML program are similar to volunteer groups in that they could theoretically be subject to similar liability by affecting a polluted site, becoming considered "operators" under Federal environmental law, and thus being exposed to joint and several liability. In some cases, states mitigate liability risk to prospective contractors by formally agreeing as a condition of the contract to assume potential liability as a result of remaining pollution or certain accidental releases (basically any instance in which the contractor would be exposed to undue liability, meaning other than liability that is a result of their own recklessness or negligence). The program proposed by the bill before the Committee today would emulate this not-unprecedented solution represented by the assumption of ultimate liability by the state, thereby providing volunteer groups the assurance they need to securely proceed with their efforts, while also ensuring that, at the end of the day, the site will be taken care of appropriately.

The proper care of these sites will be further ensured by the fact that these projects will be conducted in compliance with the States Reclamation Plan and under the guidance of the state AML program, and, where applicable, will support the attainment of water improvements under the terms and conditions agreed to by the state AML program and other relevant agencies and approved by the EPA as required by Section 405(m) of the proposed amendment.

Through the definition of Community Reclaimer provided by the bill, eligible groups will be confined to those who have no connection to the pollution at the site, genuinely seek to improve the environment, have a strong history of environmental compliance, and are otherwise worthy of participation in this program. Between the

fundamental requirement that no Title IV AML site may be subject to existing liability, the strict bar set for participation in the program by the Community Reclaimer definition, the appropriate exceptions for instances of reckless and gross negligence, and the fact that the Office of Surface Mining Reclamation and Enforcement will review and approve each project pursued under the program, this bill is clearly designed to ensure that only parties deserving of participation in the program are allowed to do so. For this reason and those described above, the Commonwealth of Pennsylvania, IMCC, and NAAML believe that this bill provides a responsible approach to achieving its much-needed ends.

Pennsylvania's citizen, watershed, and environmental groups have long been working to address the impacts of legacy mining under the state-level protections of the Commonwealth's model EGSA, but even this particularly well-established community of potential Community Reclaimers has the potential to make an even more impactful contribution given the chance through the bill before the Committee today. For states who, in the absence of a program similar to the EGSA, do not benefit from such fruitful partnerships with their potential Community Reclaimers, this bill will ease the inadvertent suppression of these groups' assistance and help those partnerships to grow.

The bottom-line is that if we are to eliminate the lingering effects of abandoned coal mines, and in particular the impairment of our communities' water resources, every available tool and every source of help is needed. The Commonwealth of Pennsylvania, IMCC, and NAAML believe this bill is a responsible solution to providing the long-awaited assurances potential Community Reclaimers need to enhance their work and give the state AML programs the assistance they need to fulfill the potential of the SMCRA AML Program.

CONCLUSION

The SMCRA AML Program has made great progress with the reclamation of abandoned coal mines, but the cost remaining to complete reclamation in every state far outweighs what has been or will be available from the AML fee. SMCRA Title IV justifiably prioritizes immediate dangers from AML sites to public health and safety, but the investment of limited grant funding in this work makes it difficult for the states to maintain adequate, consistent funding for water treatment work. As coal production declines, AML grant funding declines in turn, and with expiration of the AML fee pending in 2021, the future of AML grant funding under SMCRA is seemingly limited, or at best unclear. Meanwhile, the current inventory of known AML problems sits at over \$10 billion—which would be significantly higher were the full long-term costs of AMD water treatment accurately reflected in the inventory.

While the future of the AML program remains unclear, with each passing year in which the resolution of these obstacles to AMD treatment is delayed, this fact at least has become increasingly difficult to ignore: the remaining inventory of abandoned mine lands is so large and the existing governmental resources so comparatively limited, that without a clearer, more practical process for treating AMD under SMCRA, and without the robust assistance of the states' AML partners, it will be impossible to complete the SMCRA AML programs' mission of restoring our country's AML-impacted lands and waters.

The specter of undeserved liability under current circumstances constrains the states' efforts under SMCRA and deters motivated, well-intentioned volunteers from assisting in that work, which serves only to prolong the environmental, social, and economic harm these sites represent.

It is time for Congress to restore SMCRA's role in AMD water treatment and enable the state AML programs and their partners to make meaningful progress to that end.

QUESTIONS SUBMITTED FOR THE RECORD BY REP. GOSAR TO MR. JOHN STEFANKO

Question 1. How does Pennsylvania handle public involvement in Good Samaritan projects? For example, does the state provide public notice for each project or provide opportunities for public comment?

1a. If public notice is required, who provides that notice, the state or the Good Samaritan?

Answer. Under the Pennsylvania (PA) Good Samaritan program, the Pennsylvania Department of Environmental Protection (PADEP) is responsible for providing public notice of proposed projects. (The person or group proposing the

project may also give public notice, but is not required to do so.) There are two acceptable methods of public notice. The first approach is to provide a 30-day comment period by certified mail to adjacent property owners and riparian landowners identified by the applicant. The second approach is to provide public notice of the proposed project in a newspaper of general circulation in the locality of the project. The newspaper advertisement must be published once-a-week for 4 consecutive weeks with a 30-day comment period after the last publication date. PADEP consults with the applicant when deciding on which method to use. Project participants and project landowners can be held liable if the project causes damage to adjacent landowners or downstream riparian landowners who did not receive the certified mail notice. It is therefore important that the project applicant fully assess the potential for off-site damage to determine how far downstream damage may occur. Alternatively, the newspaper notice is more expensive and it requires a longer review period; however, it provides immunity from liability for damage to all adjacent landowners and all downstream riparian landowners. It should be noted that some newspapers no longer print but only publish online. PA is currently evaluating potential changes to our public notice process to address this trend and ensure that public notices continue to meet the requirements of the Act while reaching the maximum intended audience.

Any person having an interest that may be adversely affected by the proposed project has a right to file written objections with the DEP. Objections must be filed within 30 days after the receipt of the certified letter or the date of the last newspaper advertisement. PADEP provides a copy of all objections to the project applicant and considers the objections when approving or disapproving the project.

Question 2. How does Pennsylvania handle instances of gross negligence with their Good Samaritan partners? Are the Good Samaritans considered liable in those cases?

Answer. The PA Environmental Good Samaritan Act (Act) does not provide immunity in cases where injury or damage results from the landowner's or participant's acts or omissions that are determined to be reckless, grossly negligent or willful misconduct. The Act also does not provide immunity for unlawful activities by the landowner or participant.

The Act does not give PADEP the authority to determine who does or does not receive protections from liability. That question must be resolved in civil court. If a lawsuit is brought against a landowner or project participant for injury or damage, the landowner or participant will have to demonstrate to the court that they qualify for the protections in the Act.

Question 3. Do Good Samaritan partners often use subcontractors in executing projects?

3a. How are the subcontractors selected?

3b. Are these subcontractors protected from liability under Pennsylvania law as well?

Answer. Subcontractors are used by Good Samaritan partners in Pennsylvania. The subcontractors are chosen by the Good Samaritan partners. That selection process is not subject to the provisions of the Act.

Under the Act, a person or organization that receives payment or consideration, or receives some other benefit through a contract for reclamation, treatment or abatement is not entitled to the Act's protections. Typically, this would exclude mine operators, contractors under Government-Financed Construction Contracts, PADEP Bureau of Abandoned Mine Reclamation contracts, and contracts with sureties and private contracts with landowners.

Question 4. Does Pennsylvania currently allow mining companies to serve as Good Samaritans and conduct reclamation work?

4a. What requirements must a mining company meet in order to serve as a Good Samaritan in Pennsylvania?

4b. How do these companies prove their "innocence" with respect to abandoned mine lands? Are there any requirements regarding outstanding reclamation obligations or SMCRA violations? If so, please describe them and how companies demonstrate their eligibility.

4c. Are "innocent" companies that are somehow tied to other companies with SMCRA violations allowed to serve as Good Samaritans? For instance, if a company without any SMCRA violations is owned by a parent company with SMCRA violations, is the "innocent" company able to serve as a Good Samaritan?

Answer. The PA Environmental Good Samaritan Act covers persons who voluntarily provide equipment, materials or services at no charge or at cost for reclamation and abatement work on eligible lands and water. A "person" is defined as a natural person, partnership, association, association members, corporation, political subdivision of the Commonwealth, an agency, instrumentality or entity of Federal or state government or other legal entity recognized by law as the subject of rights and liabilities. Mine operators may qualify as Good Samaritans. However, a mine operator who has an obligation under a consent order or any other legal responsibility for the reclamation or pollution abatement would not be eligible. Legal responsibility or liability of the mine operator would be shared with the operator's officers, principal shareholders, agents, partners, associates, parent corporation, contractors or subcontractors, or related parties. Additionally, mine operators with any outstanding violation of the mining statutes would be ineligible. Compliance status and potential legal responsibility is determined using current compliance and ownership/control database information.

Dr. GOSAR. I thank the panel for their testimony. Reminding the members of the Committee that Rule 3(d) imposes a 5-minute limit on questions, the Chairman will now recognize Members for any questions they may wish to ask the witnesses.

I would like to recognize the gentleman who is the author of the current bill today, Mr. LaHood from Illinois.

Mr. LAHOOD. Thank you, Mr. Chairman, I appreciate that very much. I want to thank the witnesses for your valuable testimony here today, and I am honored to be the author of this proposed legislation.

And, Chris, I enjoyed looking at the map up on the TV monitor there. As I looked at central and west central Illinois, which includes much of my district, the volume of red dots up there—and this is not only an area that is in the Rocky Mountains or in the Appalachian area, it is applicable all across the country.

As we look at this legislation, I do think about those areas of abandoned mines in my district, and the tourism, recreation, and fishing opportunities that we currently have in much of that area. But there are many blighted areas with abandoned mines that do not have that same ability.

I have also interacted with a lot of private organizations that want to help, want to be involved, and want to be Good Samaritans. The Nature Conservancy has done a big project called Emiquon in my district along the Illinois River, which has created a vast area for recreation and tourism.

As I look at this legislation and how we get it right here, there is a lot that is going to be focused on the mechanics and the process and procedure for the application. And how do we codify that the right way before we move forward? All of you have touched on that a little bit.

I guess, Mr. Stefanko, I would start with you. In looking at the application process, and working with, obviously, the different secretaries on these reclamation projects, give us your thoughts on how we get this right, in terms of the application process.

Mr. STEFANKO. Pennsylvania, itself, already has an application in process by which, essentially, you do register to be eligible for the Good Samaritan Act in Pennsylvania.

You have to show what organization you are, the project that you are going to do, that you have absolutely no connection to that particular discharge or are liable for it in no manner, in what way.

You have to show that there is property owner access to the property, and that the property owner will allow access to actually do the treatment on the site itself.

If you meet all these specific criterias for that particular project, then we consider you registered for the Good Samaritan liability. I think something on the Federal level very similar to that would work very well.

Mr. LAHOOD. Chris, any further thoughts on that?

Mr. WOOD. No, I think that is exactly right. What we want to do is try to replicate what we have been able to do successfully in Pennsylvania around the rest of the country.

And even in Pennsylvania I would say that, because of some judicial interpretations of the Clean Water Act, we are operating at some liability risk. It may not be as substantial in other states that don't have stand-alone state legislation, but this would provide security for all of this kind of work, all around the country, which is what is needed.

Mr. LAHOOD. And Mr. Kay?

Mr. KAY. Thank you. Yes, I think making sure that communities are involved in the discussion of this, I would want to make sure that we not only talk to the Community Reclaimers and the state, but also talk to some people who have lived near some of these sites, and give them a chance to address any issues they have had in the past that we might want to include in this process. But I think we can look at that for best practices from the state, which I hear only good things.

Mr. LAHOOD. And Mr. Wood, in terms of what you have seen in Pennsylvania in terms of a success story, can you give us an idea of the amount of private-sector money that has flowed into these projects?

Mr. WOOD. I can't give you an exact amount. I can get back to you with that, though. But I will tell you that the return on investment is fairly significant. Going back 11 years ago, we looked at the West Branch of the Susquehanna and determined that for every Federal dollar going in \$1.50 was being spent. That is really dated, that is 11 years old.

Notably, given how you started your question earlier, we also determined that if we improved water quality in the West Branch to a substantial degree, we would be able to see at least \$50 million in additional economic benefit coming to the region, just from having an improved fishery alone.

Mr. LAHOOD. Mr. Stefanko, do you have any further thoughts on that, in terms of the amount of investment?

Mr. STEFANKO. I do. Basically, because of the fact that this provides another option for the states that have these AMD problems to get a lot of work done. We have limited funding to address these resources, so by allowing these entities to come in—whether it be industry, whether it be a local watershed group, who could potentially have access to other funding—it does allow us to enhance our programs and get a lot more work accomplished that we may not be able to do.

Mr. LAHOOD. Thank you, Mr. Chairman.

Dr. GOSAR. I thank the gentleman. I now recognize the Ranking Member, Mr. Lowenthal, for his 5 minutes.

Dr. LOWENTHAL. Thank you, Mr. Chair. I want to follow up on my introductory remarks. I would like to ask a question about Section 4, which is titled, "Conforming Amendments," but seems to make major changes to the law. I am referring to Section B, in particular.

Currently in Section 413(d) of the Surface Mining Control and Reclamation Act, or SMCRA, it reads, "The Secretary or the state, pursuant to an approved state program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from the mine." And also, "No control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act."

Section 4(b) of the discussion draft before us amends that by adding at the end, "unless for areas within that state there exists a state Memorandum of Understanding approved under Section 405(m) of this Act."

So, therefore, it appears that this language would now allow the state to meet standards below the Clean Water Act, as long as there is an MOU. I don't know if that is the intent of the bill, but it does seem to me that it goes far beyond the projects involving Community Reclaimers.

Could each of you address what you believe the impact of this language would be, and whether you think this amendment, this language, is appropriate?

I want to start with—anyone want to—

Mr. STEFANKO. I will jump in.

Dr. LOWENTHAL. Good.

Mr. STEFANKO. The intent of the language is we want to meet the intent of the Federal law. But in the case of these particular AMD discharges, when these groups are going in—even when we go in—the site is already polluted. So, does the benefit outweigh the good here?

If we can go in and address an AMD discharge that has been polluting a stream for over 50 years, and we can get it 90 percent to where it needs to be, I think we should allow those opportunities to happen, especially for those groups, those community groups, who live in these communities. And there are kids in these communities that have never realized what a clean stream looks like, because all they have ever seen is this orange stream.

So, the intent is for those that are covered under SMCRA, which is what we will operate under—

Dr. LOWENTHAL. Right.

Mr. STEFANKO [continuing]. And if that project is approved under SMCRA—so it might be a matter of clarifying that language in there to ensure that it only covers what we are trying to do, which is—we are already doing these projects with the authority under SMCRA, and we just want those to be able to continue without the concern of the—

Dr. LOWENTHAL. So, you believe that the language might be vague or something that might need to be clarified?

Mr. STEFANKO. Yes, it probably would need a little bit more clarification.

Dr. LOWENTHAL. Mr. Kay, do you have any response?

Mr. KAY. We have been looking at that section, too, with a little bit of confusion. I think clarity is the most important thing to offer there, but I very much agree with Mr. Stefanko about the need for states to be able to improve streams, even if they cannot quite—

Dr. LOWENTHAL. Got it. And we understand what you are getting at. But it does seem that there is the potential for this to go far beyond the Community Reclaimers, just by the very language that was presented, not so much the intent of the state and what they are doing.

Do you have any comments on that, Mr. Wood?

Mr. WOOD. I will simply add that we read Section 4(m) to speak to remediate mine drainage on abandoned mine land and water within the state. That would be the purpose of the MOU. I think one of the substantive recommendations that we will offer in the coming days would be that we see some language that speaks about measurable improvements in water quality, or some such thing that clarifies the intent of the provision.

Dr. LOWENTHAL. Thank you all. I have some more questions, but I am going to yield back now until we—thank you.

Dr. GOSAR. I thank the gentleman.

I understand that those concerns have been raised as to how landowner liability will be handled for the Community Reclaimer projects.

Mr. Stefanko, does the state of Pennsylvania enter into any sort of contract with landowners of the sites where Good Samaritans are conducting reclamation?

Mr. STEFANKO. The Commonwealth itself does not. The Good Samaritan groups that actually do the work that they submit to us do enter into agreements with the property owner to allow them access. We do provide grant funding out to groups to do this type of work, and one of the requirements that we do have at the Commonwealth is that they show us that they do have access to the property.

There are a lot of property owners out there that are a little hesitant, especially a property owner that maybe the discharge is not currently on their property, but they are willing to donate a piece of their property such that they can build a treatment system on it. They would be hesitant that they would potentially then be liable. But we do require an access agreement to a property, so it can be built on the property.

Dr. GOSAR. Yes. You have examples of that, so that you are able to explain and give a detailed in situ-type of project that you could reference to the landowner?

[No response.]

Dr. GOSAR. For example, if they are hesitant, you can actually take an example that actually went forward, and actually have them oversee that, the remedy.

Mr. STEFANKO. Yes. I mean, because there are a lot of good folks that want to build something.

We have our own access agreements that we, at the Commonwealth, use that, as everybody in this room would probably know, has a lot more language in it that can be intimidating to a property owner regarding liability. But if we could provide some type of an access agreement to them that shows that they don't have that

liability concern any more in a simplified manner, I think it would enhance that many more projects that we do get.

As far as the individual agreements that maybe are entered into between the Community Reclaimer and itself, all we need is something from them showing that they do have access. That could come in any form. It could be something as simple as a letter. It could be a formal agreement, which could very much differ from an actual consent for right of entry that we, the Commonwealth, would enter into when we are building one of our own projects.

Dr. GOSAR. You kind of went into my next question, so this is for you and for Mr. Wood.

Are the landowners granted a liability waiver during the execution of that project?

Mr. STEFANKO. Under Pennsylvania's Good Samaritan, yes.

Dr. GOSAR. Mr. Wood?

Mr. WOOD. It is blinking at me.

[Laughter.]

Mr. WOOD. Yes. We work under the protection of the Pennsylvania Good Samaritan law, so in that case we just default to their standards.

Dr. GOSAR. And since I am on that subject, do we have documentation—I mean, Mr. Wood, you showed some documentation on the screens. Do we have videos that actually show past projects, from beginning to end?

Mr. WOOD. It is so interesting that you mentioned that. We were just talking before the hearing that what we want to do is, because it is so stunning—

Dr. GOSAR. Yes.

Mr. WOOD [continuing]. The before and after, we said there are tons of before-and-after shots we can share with you. But what would be really powerful would be to take a drone and fly over one of those orange streams, and then construct some passive wetland treatment systems as we do, and then fly over that same stream. And the result is stunning. I mean the water goes from yellow to clear.

Dr. GOSAR. Well, not just beginning and end, but during. I mean time lapse, the scientific exposés that show how it is done, you know? There are inquisitive minds out there that want to see that, and I think that is kind of a teaching tool that we miss if we don't.

Mr. WOOD. I agree with you. And knowing your passion for fly fishing, there is also a benefit at the end of the line at the end of the day.

[Laughter.]

Dr. GOSAR. Absolutely, absolutely.

Mr. Stefanko and Mr. Wood, once again, can the issue of landowner liability be addressed with the MOUs developed by the states, or through the contracts established by the states with landowners granting access to their property?

Mr. Stefanko first.

Mr. STEFANKO. I believe that could be addressed through maybe a standardized access agreement that could be shared with them that would then be acceptable to be registered to get the Federal Good Sam. We could maybe potentially draft that agreement such that when we would submit this MOU to EPA for their approval,

that it would satisfy the concerns that the property owner has signed the proper access, meets all the requirements, and addresses the concerns on liability.

Dr. GOSAR. Mr. Wood?

Mr. WOOD. I agree. We have some experience with this. It was mentioned earlier by Mr. Lowenthal about hardrock mining. We worked with the EPA during the Bush administration to develop a so-called Good Samaritan agreement for cleanup of hardrock mines that are implicated by CERCLA, and they came up with a standard policy that we now use with other landowners around the West.

So, I am very confident that we can come up with something similar here.

Dr. GOSAR. I just want to compliment you, Mr. Wood, and your organization, because it is stellar, what it starts out with and what—the end of the line, when it is tugging on your fly, it makes a wonderful impact.

Mr. WOOD. Thank you, sir.

Dr. GOSAR. I appreciate it.

I now recognize the gentleman from Virginia, Mr. Beyer, for his 5 minutes.

Mr. BEYER. Thank you, Mr. Chairman, very much. Reclaiming abandoned coal mines and addressing mine draining is a huge issue in my Commonwealth.

Virginia has over \$421 million in priority sites waiting to be reclaimed, yet this year Virginia received less than \$4 million in AML grants. At that rate, we are looking at over a century to deal with these sites, and that does not even count the additional environmental damage that is caused by mountain-top-removal mining, which has already flattened at least 67 mountains in southwest Virginia.

So, naturally, I am interested in any solution such as Mr. LaHood's bill that can help speed up the pace of this cleanup, as well as help the people of southwestern Virginia and other coal communities who are struggling with high unemployment and polluted water.

Unfortunately, the President's budget announced yesterday would do nothing but hurt the people who need the most help. His new proposed budget eliminates funding for the Appalachian Regional Commission, cuts programs for health, clean water, clean air programs. In short, this proposed budget is callous and short-sighted, especially of the people who live in our coal communities.

Thankfully, the Congress has taken more interest in the welfare of the people of Appalachia, particularly through the bipartisan pilot program to reclaim abandoned coal mines in a way that provides economic development opportunities. This year the program was expanded to include Virginia, which will receive \$10 million to facilitate these sorts of community-driven projects that have an economic development nexus.

A little while ago we heard in this Subcommittee on the RECLAIM Act, which would make this pilot project permanent. And there are some changes that I think could be made to the RECLAIM Act and to this bill, but together they are a very

powerful combination to provide critically-needed investment into the economy and the environment of southwest Virginia.

So, Mr. Kay and Mr. Wood, could you give any concrete examples of the impact these bills might have on Virginia, and how these bills could act to improve the health and economic prospects of the people of the coal fields?

Mr. KAY. Yes, we worked with a mining engineering firm last year to look at all the possibilities of RECLAIM in southwest Virginia. And one example in the city of Norton, there is a 2-mile-long river walk, they call it the River Walk Project they are working on. It goes through an old coal processing facility that has some acid mine drainage issues and it is on the AML inventory. They are trying to create a river walk through that, get that cleaned up.

And then, just across the street from that, they also have a highwall that is right in the middle of what should be a really good commercial development area. They are hoping to clean all that up, invest some additional funds, and really turn around the entire city of Norton. So, those are some of the exciting things that are going on, but it goes well beyond that, and we are very excited about the pilot money now going to Virginia.

Mr. BEYER. If I can add to that, my friend, Jack Kennedy, is the clerk of the court in Norton, and is trying to make Norton and Wise County the UVA capital of America, if not the world, so I hope the RECLAIM funds help to do that.

Mr. KAY. He has had no small part in making that happen, along with Congressman Griffith.

Mr. BEYER. Yes, thanks.

Mr. Wood, do you have any insight, and not just the Virginia coal fields, but coal fields in general?

Mr. WOOD. Well, I will start with Pennsylvania because, again, of the state Good Samaritan protection that they have offered. We have been able to do—there are over 250 active reclamation projects that are ongoing across the state, but one in particular, that I think has relevance for places like Virginia and other parts of Appalachia, is in the Babb Creek drainage.

And there, the Babb Creek Watershed Association, one of these local watershed associations that has membership—TU members are a part of it—they worked to clean up over 14 miles of stream that is now a wild trout fishery. It was historically a dead, red stream, and now it is 14 miles of destination wild trout fishery. And people are coming there now to fish these waters that they had never been able to fish before.

That is the kind of thing that we can promote all across Appalachia—and not just Appalachia, all across the country.

Mr. BEYER. Great. Thank you all very much.

Mr. Chair, I yield back.

Dr. GOSAR. I thank the gentleman. I now recognize the gentleman from New Mexico, Mr. Pearce, for his 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate the hearing on the bill today, and appreciate the input from both sides.

I was listening to the opening comments of the Ranking Member and then the follow-up questions, and my read is that you are open to the idea, but this bill might need some manipulation.

Mr. Chairman, I just think that is ultra-important. I might not have the same reservations about the exclusion on the states having some right, but if we could provide that protection in the language of the bill—and I talked to Mr. LaHood—I think it is imperative that we give as much assurance across the aisle, get this thing as bipartisan as we can, because it has been such a divisive issue. And it is such a big issue for us states that have mining interests that I would gladly work to see if we could accommodate.

I would yield to the Ranking Member to make comments about that. I don't want to put words in your mouth.

Dr. LOWENTHAL. Absolutely. What we are talking about is the clarity in the language, and we don't believe that the issues that we are raising go in any way against the intent of the bill, and we want to work. We just want to make sure, as some of the witnesses have pointed out, that they do add some needed clarity—

Mr. PEARCE. Absolutely.

Dr. LOWENTHAL [continuing]. In understanding what that section really was, and what is appropriate.

And I agree with you, this should be a bipartisan bill and we would like to work with you.

Mr. PEARCE. If the gentleman would yield just a bit further—

Dr. LOWENTHAL. I yield back.

Mr. PEARCE. One of the things that affects us is Homestake Mine in my district, and they have been remediating for years. The EPA is thinking about changing the standard to where they would have to remediate naturally occurring minerals, and that seems like an untenable position. Is that something that you are open to discussing, too? Again—

Dr. LOWENTHAL. Yes, I think we can—

Mr. PEARCE. I am not trying to catch you on a corner, I am just saying that—

Dr. LOWENTHAL. I think we should be discussing that.

Mr. PEARCE. OK.

Dr. LOWENTHAL. I would be open to discussing that, absolutely.

Mr. PEARCE. Yes, and that is probably—

Dr. LOWENTHAL. We are not going to commit right now, but that is something that we can really clarify.

Mr. PEARCE. And I think that the company should have to remediate all the way that they can, but then it gets down to this—if you get to 95 percent and you cannot get any further, if you get into the naturally occurring, then we should have some further discussion.

But if the gentleman is open to it, then I will commit that we will work—and Mr. LaHood—be happy to work on this. And I thank the gentleman for his comments.

Mr. Stefanko, have you run into the problem I am discussing with the Homestake Mine in my district, that the government might change the game after you are in? And what have you all done about that? It is particularly thorny, because I was there visiting on the site about a year ago, and they expressed, OK, we are getting close. And now it looks like it may never end, because the minerals that they are trying to work on, some are naturally occurring.

So, if you could tell me a little bit of your experience, that would be valuable.

Mr. STEFANKO. I am familiar with both the active and the abandoned, because I oversee both programs. On the active side, we have run into the issue that you are bringing up. But when we permit the site, we do a characterization of what that water should look like. And that would include historically what it was and what it naturally should be. But we have run into instances like that.

On the AMD side, not so much. We know what the major constituents are that impact the streams to get them to recover. And when we go forward with a lot of these AMD projects, which are done through our Good Samaritan projects, which enhance our program, like I said earlier, we are getting back probably about 90 percent of what it should be sometimes. But doing nothing versus getting back 90 percent, to us, is a—

Mr. PEARCE. If I can jump in here before the last minute runs out, how about the expertise? Do you find that you all have developed enough expertise to not need the Feds on site, or is that something that you all think is very difficult? Again, I am thinking about for a state like New Mexico.

Can you develop the local expertise, or is that Federal oversight needed and desired? Tell me a little bit about that.

Mr. STEFANKO. We have a great internal expertise, as well as along with some of our sister states. The addressing of acid mine drainage and treating acid mine drainage has a long history of improving to the point where we are today.

And part of that does include a lot of our watershed groups who have engaged consultants and companies that are aware of how to treat it in various manners, and what we have known over the years. We have internal, but we also do external.

I would say we, at the state of Pennsylvania—I would feel very confident that we do have the expertise. And we do reach out to our Federal partner, OSM—there is a lot of key staff in the OSM, at least—we deal with in PA—that have that knowledge with regards to the treatment of acid mine drainage, and we work with them a lot, as well.

Mr. PEARCE. Thank you, sir. I appreciate that and I yield back. Thank you, Mr. Chairman.

Dr. GOSAR. I thank the gentleman. I now recognize the gentleman from Pennsylvania, Mr. Thompson, for his 5 minutes.

Mr. THOMPSON. Chairman, thank you so much, and I want to say thank you to the author of this bill. As a Member of Congress that has over \$442 million in AML liabilities in a state that has \$5 billion in AML liabilities, we do take great pride in the fact that much of the mining that fueled both the Industrial Revolution and the manufacturing of tanks and artillery to defend our Nation in World War I and World War II, a lot of that coal came out of Pennsylvania's Fifth District. But we also know that we have a responsibility now to get those mining sites that really did not have the technology and the insight cleaned up.

First of all, Mr. Woods, thank you for being here. I am real proud that my home TU chapter possesses the Golden Trout Award, Spring Creek Chapter, and I think that is Amy sitting behind you there. You all have been a great partner in my work on this

Committee, and in the Agriculture Committee with the Conservation and Forestry Watershed Subcommittee, the past three terms.

I have enjoyed spending time out on these sites. It is amazing to watch, whether it is passive or active, processes are put in place, the reclamation that occurs to streams that run orange to be reclaimed into—and these are active mining sites, they are some of the best trout waters that I have experienced, and let alone the re-planning on those sites that are just a magnet for game. It is a good place to hunt and fish.

Mr. Wood, can you discuss the variety of non-governmental entities that currently partner or would be encouraged to do so under this bill? And does this include both non-profit and private commercial businesses?

Mr. WOOD. Well, I think if the bill were to pass, you would see a groundswell of support for doing a lot of this kind of abandoned mine cleanup that, right now—I mean Pennsylvania sort of is a bastion, it is a hotbed of these watershed groups, because of the protection the state offers, that are out there doing restoration.

As I mentioned earlier, there are 250 active projects that are happening right now in the West Branch Watershed alone. We have provided technical assistance to something like 75 different watershed associations who are actively working on treatment projects.

I think this would basically free up people like private landowners, who are just thoroughly intimidated by liability right now, maybe owners of hunt clubs, or things like that, that have a vested interest in conservation, they want to do the right thing, they just do not want the liability implications.

I think more local communities would probably get involved than have been involved historically. I mean there is something in this for everyone. Anyone who has an interest in clean water, and anyone, presumably, who wants to maintain the value of their property, should have an interest in clean water, I think, would be an advocate, a supporter, and a partner in this.

Mr. THOMPSON. I think the term you used, groundswell, is a great way to describe it. Because I would see that, as well. It is exciting.

Mr. Stefanko, thank you for your service to the Commonwealth of Pennsylvania over many years, going back to your internship with PennDOT, but mostly with the Department of Environmental Protection.

My question for you is, does Pennsylvania allow for re-mining under the Good Samaritan program, and have companies sought to conduct a re-mining along with Good Samaritan reclamation projects?

Mr. STEFANKO. We do not allow re-mining under the Good Samaritan Act. All of our re-mining is done under the Title V program. We have an extensive re-mining program that works very well, and it is all under the regulatory arm.

Mr. THOMPSON. Well, a follow-up question, since Pennsylvania already has a program in effect, will this legislation have any unintended consequences in Pennsylvania, as a result of that?

Mr. STEFANKO. None, to my knowledge. If anything, it will further enhance Pennsylvania's program. I think we can increase from the 79 and get a lot more groups and communities interested in doing these types of projects, which is only a benefit, because as you well know of the problems we have in PA, and we do not have the funding to do all of those.

Mr. THOMPSON. Right.

Mr. Kay, in your testimony you mentioned the issue of re-mining and stated your opinion that incidental coal removal can facilitate reclamation by reducing costs without causing more harm to the environment. Can you explain what you mean when you referred to incidental coal removal in your testimony, please?

Mr. KAY. Yes, thank you, Congressman. In some cases during reclamation there is really no way to do it without removing a little bit of coal, especially for some large highwalls. There is really no way around it, so you are going to get that.

I believe in the state of Pennsylvania they have a good way of defining incidental coal removal versus re-mining. I think that is a difficult thing to do, and I hope one that we do not have to tackle through this bill, but that is still something to make clear that it is important.

Mr. THOMPSON. Thank you.

Thank you, Chairman.

Dr. GOSAR. I thank the gentleman and now recognize the gentleman from Arkansas, Mr. Westerman, for his 5 minutes.

Mr. WESTERMAN. Thank you, Mr. Chairman. Thank you to the witnesses, and thank you to my colleague, Mr. LaHood, for proposing this legislation. I agree, there is no reason this should not be a bipartisan piece of legislation.

I am reminded of the hearings we had in the Full Committee on the Gold King Mine spill last year, and that is probably a crash course on how not to do mine reclamation. I was very disappointed as we got into the details on that about how there were no professional engineers involved in the planning process, there were no drawings or documentation. And we were talking about liability here, and, ultimately, I still don't think anybody has been held accountable for that mine spill last year.

But in reading this bill in Section 3, I do want to point out there has been a question about liability, but one thing that is very positive, it says, "A description of the proposed project, including any engineering plans which must bear the seal of a professional engineer that must be submitted."

So, when you do the proper planning and the engineering on the front end, you are mitigating the liability and reducing the amount of liability that you actually would have. We may need to do some more work, but I think this is definitely moving in the right direction.

When we are thinking about the Gold King Mine, and we talk about acidic water, I know that is a problem that can be there in treating mine drainage, and that is one of the most challenging aspects of mine reclamation. Those states face not only technical challenges, but also compliance challenges under the law.

Mr. Stefanko, how has Pennsylvania handled the problem of treating acid mine drainage?

Mr. STEFANKO. We have an internal abandoned mine land program, where we get the Federal grants. We do our own projects to treat the acid mine drainage, which is done through our own process, where we have in-house engineering, or we consult that out. Projects are designed and built all under the Commonwealth rules and regs.

We also have this piece here, which is where we have a lot of our non-government entities and watershed groups that have a lot of interest in it. We have a number of grant programs. One of our biggest and probably most well-known is the Growing Greener program, where groups provide us a project that is submitted, it is reviewed and done through a review process, including a technical review, and whereby then we would provide funding back to them for that watershed group then to build a treatment system to address the AMD.

It can be done either passively or actively. Actively, obviously, is more costly, because of the O&M costs. So, there is the passive, but we look at all of these different aspects when we are actually going to design and/or provide grant funds and/or monies or look at these projects that we get under the Good Samaritan Act, to ensure that they are being properly designed and built, and address the type of acid mine drainage that it is.

Mr. WESTERMAN. Yes. And, Mr. Wood, same question to you about how has your organization approached such projects. And I will say that Arkansas may not be well known for trout fishing, but we have probably have some of the best trout fishing in the country, some of the nicest trout streams there, and really, if you want to catch really big trout, come to Arkansas.

[Laughter.]

Mr. WOOD. I think you had the U.S. record largest trout caught out of the white, actually.

Mr. WESTERMAN. The brown trout.

Mr. WOOD. Yes, a big brown trout. It was caught by, like, a 10-year-old on a Snoopy rod, or something.

Mr. WESTERMAN. Something like that.

[Laughter.]

Mr. WOOD. So, as Mr. Stefanko said, we work almost as an adjunct to the state in our cleanup. In Pennsylvania, we will submit a plan to them, it will be reviewed, and they will approve it.

Largely, what we have done in places like Kettle Creek are passive treatments, where we have constructed wetlands that we would sweeten with lime, and then we divert the stream through these constructed wetlands that then sweeten the water so that by the time it returns to the stream, its pH is in good shape.

Mr. WESTERMAN. And my understanding is, even with some of the best water treatment techniques available, the stream sometimes still cannot meet the Clean Water Act standards. Can you explain that?

Mr. WOOD. Well, there are—you know, I am a political science major, you may not want me to do that.

[Laughter.]

Mr. WOOD. But typically what happens—fairly low cost, this isn't intensively engineered stuff. I mean for several hundred thousand dollars, you might be able to get to 80 or 90 percent improvement,

but it might be a couple million dollars to get that additional increment. And——

Mr. WESTERMAN. So, you get some diminishing returns, but even though they might not meet the Clean Water Act standards, they can still support wildlife habitat?

Mr. WOOD. And naturally reproducing trout populations.

Mr. WESTERMAN. Which is a pretty high standard.

Mr. WOOD. That is exactly right.

Mr. WESTERMAN. I yield back.

Dr. GOSAR. I thank the gentleman and now recognize the gentleman from Colorado, Mr. Tipton, for his 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. I apologize that I had to step out, so if I get a little redundant, I hope you will forgive me.

I found it interesting, when we have had the conversation going on, and understand the admirable draft that my colleague, Mr. LaHood, is putting forward, to be able to address it. It points specifically to a lot of challenges that we are also facing, in terms of hardrock mine cleanup, as well, with Good Samaritan legislation that we are trying to be able to put forward.

So, I would like to ask Mr. Wood a couple of questions, if you would. And if you want the actual best-tasting fish caught out of a stream, those come out of Colorado.

Mr. Wood, in your testimony you stated that, as an NGO, your organization is not well suited to be able to apply for or to hold a discharge permit. Can you go into maybe a little more detail for us, and for everyone, why that is the case?

Mr. WOOD. Yes, sir. And I want to thank you, Mr. Tipton, for your leadership on the hardrock side of this equation in Colorado, as well. And, just for the record, it was not me that said anything about fish tasting.

Mr. TIPTON. OK.

Mr. WOOD. We are big believers in catch and release at Trout Unlimited.

So, NPDES permits, the non-point discharge elimination system, I think. Is that right? They are very expensive to get, and often they are associated with perpetual treatment systems, which a non-profit entity like mine is not well suited to have. And frankly, just the liability associated with holding such a permit is a profound disincentive for groups like TU to do that. We have never even tried, for example.

Mr. TIPTON. And to clarify, just to be able to do the right thing, to try and be able to clean up some of these areas.

I was a little curious on the slide that you put up with the passive system. And it actually goes to my colleague, Mr. Westerman's question, in terms of being able to comply with the Clean Water Act. That is not often the case, is it, with the passive systems? Is that effectively seeking the perfect to opposition to the good, and——

Mr. WOOD. Right.

Mr. TIPTON [continuing]. Actually impacting our ability to move the ball forward to be able to clean up some of these streams, and to be able to create a better environment?

Mr. WOOD. I think that is right, sir. I mean, again, remember, we are not talking about places where we can even hold people

accountable any longer. And this is especially the case with some of your western hardrock mines. Those people are 100 years gone.

But to the extent that we can make it easier for people who want to make the world a better place, who want to make the water cleaner for their kids, I mean that is something everyone should be interested in doing.

Mr. TIPTON. You know——

Mr. WOOD. And I think that is what this bill does.

Mr. TIPTON. I agree with you. And talking about it, do you believe, when we are talking about these passive systems, that an AML treatment system, passive water treatment system, should—when we are going to materially improve those water-quality systems, that it should be a point of discharge for compliance purposes under the Clean Water Act? Would that be useful?

Mr. WOOD. We would like to see some language inserted into the bill—and this came up a little earlier, I am not sure if you were here or not—where we talk about substantial or significant improvements to water quality. There should be an upward trend, anyway, there should be an improvement. And that is what this is all about.

Mr. TIPTON. Great. Thank you so much. And I didn't mean to imply that you were eating the fish.

[Laughter.]

Mr. TIPTON. So, Mr. Stefanko, I thought it was pretty curious, listening to you, and I appreciate your comments. In your testimony, you said 90 percent—where you achieved that cleanup to where it should be, we should be able to go forward. Do you have anything to be able to add to some of these treatment systems, those points of discharge, how that is going to be a positive for us with the passive systems?

Mr. STEFANKO. I am not sure I actually understand what you are asking.

Mr. TIPTON. Well, do you have anything to be able to add on the treatment systems as a point of discharge, in terms of some of the comments that we——

Mr. STEFANKO. Basically, when I said about achieving 90 percent, one of the things—and I think the Chairman might have mentioned this—is the technology has advanced, and we have seen it evolve even in the many years since I started in the Abandoned Mine Land Program.

If we can go out there with a current technology and we can get to 85, 90 percent, maybe next year something else is going to come along that will get us to the other 10 percent.

It has been an ongoing thing in Pennsylvania, as well as all of our sister states, that as technology improves, we are finding better and better ways to treat the acid mine drainage, and doing it in a more cost-efficient manner. And being that we have such a large problem, we need to continue to do that.

So, if we can get to a point now, and knowing that maybe next year something else will come along better that we could either add to that system or replace that system in the future to get us to the end point, that is where we would like to go.

Mr. TIPTON. Great. Thank you. And I am just about out of time, Mr. Chairman. Thank you.

Dr. GOSAR. I thank the gentleman. But I have a question here. How big was that fish?

Mr. WESTERMAN. That brown trout?

Dr. GOSAR. Yes.

Mr. WESTERMAN. It was, what, 40 pounds or something?

Mr. WOOD. I want to—

Mr. WESTERMAN. Massive, yes.

Mr. WOOD. I think it was 40-ish. But, you know, we are anglers, so it could be a couple pounds on either side.

Mr. WESTERMAN. Was it that big?

[Laughter.]

Mr. WOOD. Oh, no, it was as big as the child that caught it.

Dr. GOSAR. I know, but typically, a fisherman always says, "Hey, I caught the big one, let it go," and they are really telling you that it is this size—a deception.

Mr. WESTERMAN. We have this amazing tool called Google. I will get back to you.

[Laughter.]

Dr. GOSAR. OK. The gentleman from Georgia, Mr. Hice, is recognized for 5 minutes.

Dr. HICE. Thank you, Mr. Chairman. While we are on it, I will say that we live on Lake Oconee in Georgia. And just last week while we were here, my wife sent me pictures of five fish that she caught that day, one of which she cleaned, fried it up, and ate it. And I would challenge anyone on the best tasting fish. She knows how to do it extremely well.

But I do thank you for holding this hearing, Mr. Chairman. And, as you are aware, I partnered with my good friend, Mr. Lowenthal, on the Bureau of Land Management Foundation Act, and that was a great step forward for the bipartisan goal of protecting our environment through the cleanup of mines on BLM lands. And I thank the gentleman for that.

And I think pretty much we all agree that we believe God gave us this land that we live in, and we should work it to our benefit. But at the same time, we have the enormous responsibility to be good stewards and to be good caretakers of the land that we love.

I just want to say thank you to my good friend, Mr. LaHood, on his efforts on this bill that will help the process of cleanup from a different angle.

And again, the Ranking Member, thank you for your willingness to work on adjustments and clarifications on this, so that we can work together in this regard.

I do want to go back on some of Mr. Tipton's comments, particularly regarding the EPA. I understand that they have attempted to solve some of the problems posed by the Clean Water Act on the compliance side of things. In fact, there were a couple of guidance memoranda explaining under what conditions they would waive enforcement; and states also have engaged with the EPA to address some of the compliance challenges and some of the issues and guidelines, outlines, how they can improve water quality.

So, kind of within all this context, Mr. Wood, let me ask you. Although the EPA has put out this guidance, why haven't the states—why hasn't this gone anywhere? Why isn't there any compliance relief?

Mr. WOOD. Are you speaking specifically about hardrock mines, or coal mines?

Dr. HICE. Well, specifically with the acid mine drainage abatement process, all that. It just seems to not be getting the relief needed.

Mr. WOOD. So, I want to commend the EPA, because we did work well with them to come up with this so-called Good Samaritan provision, which does relieve a lot of the liability associated with cleaning up so-called dry sites for hardrock mines that are regulated under CERCLA.

And those cleanups are relatively straightforward, too. I mean it often involves simply digging a ditch, lining it, bulldozing material—acid mine leaching material—into the ditch, covering it with parent material, and then putting an impermeable liner over it and digging a French drain. Again, it is not complicated work.

And that is 80 percent of the problem with dry sites. Dry sites represent 80 percent of the problem in the West. The really tough problems, though, are associated with these draining adits that implicate the Clean Water Act. And EPA has tried to offer guidance on that front, as well. But at least my organization did not find enough comfort in that, that the liability really was significant enough that we would want to engage.

Dr. HICE. Well, that is really what I am trying to get toward.

So, can citizens still sue? I mean the Good Samaritan does not cover everything.

Mr. WOOD. Right, that is right. Citizens can still sue under the Clean Water Act. Citizen suits are a part of that law.

Dr. HICE. For projects that do not meet the standards of the Clean Water Act.

Mr. WOOD. Right, which is one reason why groups like mine have not, to date, stepped up and taken advantage of that guidance that EPA has put out there to try to make it easier to do those cleanups.

Dr. HICE. So, we have this huge hurdle in the way—what is it going to take to get over that?

Mr. WOOD. Well, I think, as we are doing right now with coal, some good-faith conversations to make very minor adjustments to the laws that are really important, and that TU really supports.

I mean, make no mistake about it. We are the most full-throated advocate for the Clean Water Act there is. But just some minor tweaks that make it easier to make improvements to water quality that may not be perfect, I think, is what we are looking for.

Dr. HICE. So, although there have been attempts to clarify with the EPA, there is still work to do to provide legal cover. Is that the bottom line?

Mr. WOOD. Yes.

Dr. HICE. OK, thank you. Thank you, Mr. Chairman.

Dr. GOSAR. I think the gentleman is looking for trust. Trust is a series of promises kept. And I think we are sitting on that application. That is why we want to see visual examples of that, because that goes a long way.

So, I applaud the gentleman for his questions, I applaud the gentleman for bringing the legislation forward, and the cooperative spirit that we see today.

I thank the witnesses for their valuable testimony and the Members for their questions. The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing.

Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following the hearing. And the hearing record will be held open for 10 business days for these responses.

If there is no further business——

Mr. WESTERMAN. Mr. Chairman?

Dr. GOSAR. Yes?

Mr. WESTERMAN. For the record, can I respond to your question? The world record German Brown Trout——

[Laughter.]

Dr. GOSAR. I want to hear this.

Mr. WESTERMAN. Was 40 pounds and 4 ounces, caught from the Little Red River in Arkansas in 1992.

Dr. GOSAR. Wow. That is a fish.

Well, having been up in Alaska, that is the only thing I was going to comment on, is his consistency.

So, without further objection, the Subcommittee stands adjourned.

[Whereupon, at 3:25 p.m., the Subcommittee was adjourned.]

