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**Steve Moyer**  
*Vice President of Government Affairs*

The Honorable Paul Gosar, Chairman  
Subcommittee on Energy and Mineral Resources  
House Committee on Natural Resources

The Honorable Alan Lowenthal, Ranking Member  
Subcommittee on Energy and Mineral Resources  
House Committee on Natural Resources

June 7th, 2017

**Re: Oversight Hearing on the Office of Surface Mining Reclamation and Enforcement's Abandoned Mine Lands Program**

Dear Chairman Gosar, Ranking Member Lowenthal, and members of the Subcommittee:

Thank you for the opportunity to submit for the record the following testimony for the Subcommittee's June 7, 2017 hearing on the Office of Surface Mining Reclamation and Enforcement's Abandoned Mine Lands Program.

Trout Unlimited (TU) represents more than 300,000 conservation-minded members and supporters, with over 400 chapters and councils across the nation. Our mission is to conserve, protect, and restore North America's trout and salmon fisheries and their watersheds. We have 250 staff spread across America who work with our members and a wide variety of partners – including private landowners, volunteer conservation organizations, state and local agencies, and other stakeholders – to accomplish our mission.

Specifically, we have been working to clean up pollution from abandoned coal mines in Pennsylvania since 1998. Our focus began in the lower Kettle Creek watershed in northcentral Pennsylvania where over the years we have completed numerous abandoned mine drainage (AMD) studies, and constructed nine AMD treatment systems and a land reclamation project. This work has resulted in the recovery of native brook trout to three miles of previously dead streams and reconnecting over six miles of brook trout fishery.

Furthermore, we have expanded our AMD cleanup efforts across Pennsylvania to provide technical assistance to other conservation organizations and local and state agencies that address abandoned coal

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**A mission to conserve, protect, & restore North America's coldwater fisheries and their watersheds.**

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mine pollution. Our technical assistance has helped over 75 such entities with approximately 200 AMD projects. Highlights from our technical assistance include water quality improvements and recovering trout streams in seven miles of Fall Brook and Tioga River (Tioga County), nine miles of Scrubgrass Creek (Venango County), 14 miles of Tangascootack Creek (Clinton County), and 10 miles of Morgan Run (Clearfield County) – to name a few. Many additional successes have been accomplished by other organizations and agencies across Pennsylvania.

### **Making Great Strides, but Still a Long Way to Go**

As mentioned above, accomplishments in water quality improvements and fishery restoration have been made over the years. However, these success stories of improving water quality to a mile of stream here, restoring fish to a few stream miles there – while tremendously important to the local communities in which they are located – seem minor and almost insignificant when compared to the sheer quantity of polluted waterways that remain impacted by abandoned coal mines. Across Pennsylvania, 5,605 miles of streams and rivers are still impaired by AMD and more than \$4 billion in high Priority 1 and 2 abandoned mine sites, which are health and safety hazards, are on the federal inventory. More coal was mined in Pennsylvania prior to the passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977 than in any other state, thus it is no surprise that Pennsylvania also has more polluted streams and unreclaimed surface mines than other states.

Why does it appear that so little progress has been made after \$643.8 million has been spent in Pennsylvania through OSMRE's Abandoned Mine Lands Program since its inception in 1977, as well as additional funds through private and state funding programs? The answer is simply that cleaning up abandoned coal mine pollution is very complex. It cannot be likened to a culvert project in which mere replacement removes a physical barrier for fish passage and immediately opens up many miles of fish habitat. AMD is a very complex problem and each individual source of AMD is characterized by a complex combination of influences from geology, hydrology, chemistry, hydrogeology, biology, and the method of mining used to extract the coal in the first place. There is no one cookbook method that can be applied across the board to address pollution from abandoned coal mines. Often times several years of assessment is necessary, followed by an equal length of time or longer for design, permitting, and finally construction, not to mention the perpetual operation and maintenance required mine drainage treatment systems.

Furthermore, it can be observed that the federal inventory of Priority 1 and 2 health and safety hazards has remained relatively unchanged since 2006. Problem sites have been addressed and removed from the inventory, but almost as quickly as they are resolved, new problem sites are identified and added to the list from mine subsidences, mine blowouts, and mine fires. Furthermore, as infrastructure and

communities encroach further into rural areas, long-forgotten abandoned mine highwalls and deep mine openings suddenly become serious safety concerns for nearby residents and their children.

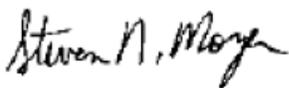
The progress made on cleaning up pollution from abandoned coal mines, while at the same time adding new problem sites that continue to arise from the abandoned mines, is a scenario that exists not only in Pennsylvania, but also occurs in West Virginia and Kentucky, and even in certified states such as Montana and Wyoming. According to OSMRE's e-AMLIS, more than \$10 billion in abandoned coal mine reclamation remains to be addressed across the nation. This estimate generally includes only Priority 1 and 2 health and safety hazards, not Priority 3, which denotes the restoration of land and water resources and the environment that is degraded from abandoned coal mines. In Pennsylvania alone, multiple sources have put the total cost to fix all abandoned coal mine problems at \$15 billion.

### **Demonstrated Need for Continuing the Fee Collection through Title IV of SMCRA**

At the current rate of funding from OSMRE's Abandoned Mine Lands Program, which is financed through Title IV of SMCRA from a fee collection on coal production and reauthorized in 2006, it would take over 100 years to address the vast scope of abandoned coal mine problems in the United States. In addition, annual grants to states have been less than originally estimated since the 2006 reauthorization due to inflation, sequestration, declining coal production, increasing abandoned mine land inventory, and other factors. Clearly there is a need to continue the Title IV Abandoned Mine Lands Program. As the fee collection that funds the Title IV Abandoned Mine Lands Program is set to expire in 2021, we strongly support the continuation of the fee collection and reauthorization of Title IV of SMCRA.

TU is thankful that the Subcommittee held this hearing on OSMRE's Abandoned Mine Lands Program and appreciates the opportunity to submit this testimony. We look forward to working with the Subcommittee to ensure reauthorization of the Title IV fee collection to continue funding this program, which is critical to cleaning up abandoned coal mines across the nation. Thank you for your time and consideration of this important issue. Please do not hesitate to contact me at smoyer@tu.org or 703.284.9406 or Amy Wolfe, our Eastern Abandoned Mines Program Director at awolfe@tu.org or 570.786.9562.

Respectfully submitted,



Steve Moyer

# Basics of SMCRA Title IV

May 2017

The **Surface Mining Control and Reclamation Act (SMCRA)** is sweeping federal legislation regulating coal mining in the U.S. Prior to its original passage in 1977, the coal mining industry was largely unregulated, especially with regard to the environment. Over a century of environmentally insensitive mining practices took a huge toll on the land and water where mining occurred. But SMCRA changed the face of the coal mining industry into one that is vastly safer with a significantly smaller environmental impact. Over the years, SMCRA has been amended several times, most recently in December 2006, where a number of changes accelerate reclamation of mine-scarred lands and waters in the coal regions of the U.S.

**Title IV** is the section of SMCRA that **addresses problems associated with the poor coal mining practices of the past.** Most importantly, Title IV contains the **funding mechanism** to reclaim land and water that was degraded by mining done before SMCRA's passage in 1977.

Funding for reclamation activities is derived from a **reclamation fee** on every ton of coal mined in the U.S. since 1977. Those fees are placed into an account known as the **Abandoned Mine Reclamation Fund (AMRF).**

- ◆ Reclamation fees will be collected through 2021, then cease.
- ◆ The federal Office of Surface Mining Reclamation Enforcement (OSMRE) administers the AMRF and the SMCRA program.

Now through 2022, funding for abandoned mine reclamation will be **distributed to states as annual grants.** The money comes from the reclamation fees in the AMRF having been collected during the prior year.

- ◆ These grants for reclamation is called **Title IV funding.**
- ◆ Only states impacted by past coal mining receive Title IV funding.
- ◆ A complex formula that considers a state's current coal production level *and* the state "historic" production level is used in determining each state's annual grant.
- ◆ According to current projections, Pennsylvania's annual grant, starting with \$47.5 Million in 2016, will generally increase until funding reaches about \$450 Million in 2021.
- ◆ **PA's remaining AML inventory is \$4.6 Billion!**
- ◆ Due to inflation, sequestration, declining coal production, increasing AML inventory, and other factors, annual grants to states have been much lower than expected and reclamation efforts will not be complete when the fee collection is set to expire in 2021. **Legislative action is required to continue this good work.**

## Only certain types of reclamation projects are eligible for Title IV funding:

### "Priority 1 & 2" Health and Safety Problems

- ◆ Priority 1 problems represent "extreme" danger.
- ◆ They are mostly land-based hazards, including open mine shafts and portals, dangerous highwalls (man-made cliffs), open pits, mine fires, unstable waste piles, abandoned buildings and equipment, subsidence.
- ◆ Nearly 950,000 acres remain degraded in Pennsylvania.
- ◆ The mainstream of the annual grants is intended to repair these problems (P1s and P2s).
- ◆ The official federal inventory of Pennsylvania's P1 and P2 problems estimates that they will cost \$4.6 Billion to fix. Nationwide, that amount could exceed \$7.2 Billion.

### "Priority 3" Acid Mine Drainage (AMD)

- ◆ also known as Abandoned Mine Drainage
- ◆ AMD is Pennsylvania's largest source of water pollution, degrading over 5,500 miles of streams and waterways with acidity and heavy metals.
- ◆ **Funding to address AMD is limited** to situations where the problem is
  - α. **connected with a P1 or P2 project,** or
  - β. using funding from a Title IV provision known as the **"30% AMD Set-aside."**
- ◆ The **30% AMD Set-aside** provision allows a state, at its discretion, to use **up to 30% of its annual grant** to address AMD problems. This gives each state flexibility to tailor its reclamation program for its own particular mix of problems.
- ◆ The inventory of AMD problems in Pennsylvania is not completely characterized.

### Drinking Water Supplies

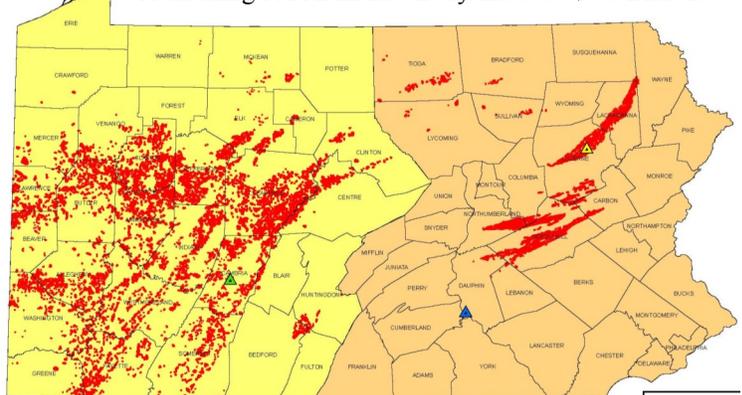
Drinking water supplies substantially damaged by coal mining before 1977 are also eligible for funding. A state may use all or some of its annual grant to build or fix water supply facilities.

### Administration

Each state may use a **portion of its annual grant to administer its reclamation program.**

- ◆ In Pennsylvania, the Department of Environmental Protection's Bureau of Abandoned Mine Reclamation (BAMR) administers the Title IV program.

Remaining PA AML Inventory Exceeds \$4.6 Billion!



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# Reauthorization of AMRF Fee Collection

## The AMRF Fee Collection is Set to End in 2021

The Fee Collection must be reauthorized through an amendment to SMCRA for our valuable work to continue. Proposed legislation includes the following key points:

**Reauthorization of the AMRF Fee collection until year 2036.** Based on requested funding levels, projected future production, and estimated costs of cleaning up inventoried sites, it will take 15 years to address most of the abandoned mine problems.

**Restructuring of the Fees.** Since the enactment of SMCRA in 1977, the per ton reclamation fees have never accounted for inflation while the cost of reclamation continues to rise. We propose that the reclamation fee should be restructured to 35 cents per ton of coal produced by surface coal mining and underground mining, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less.

**Increasing Minimum Program State Funding to \$5 Million Annually.** Since 2006, this funding has been set at \$3 million. In recent years, minimum program states have received significantly less due to sequestration. Additionally, in recent years, OSMRE has discontinued support to states and tribes with AML emergencies forcing states and tribes to use annual allotment to mitigate AML emergencies. Increasing this amount would help make up for past underfunding and ensure that states and tribes with significant AML problems but low production would be able to continue running effective programs. This potentially affects ten states.

**Exempting of SMCRA Title IV Grants from Sequestration.** Funds in the AML Trust Fund collected through SMCRA Title IV are not taxpayer funds, they are dedicated funds which can only be sued for AML reclamation, and thus will not accomplish deficit reduction. The only way to exempt these funds from sequestration is to include it in legislation. If the AML Fund grants continue to be subject to sequestration, States will lose upwards of \$188 Million and Pennsylvania alone stands to lose upwards of \$37 million over the remaining seven years of the current AML program. The SMCRA Title IV grants should be exempt from sequestration and all Title IV sequestered funds should be given back to the states, retroactive to FY 2013.

## The PA AML Campaign also Supports:

**Establishment of a Direct Line Item in OSM Budget for Emergency Projects.** Section 410 of SMCRA requires OSMRE to fund the emergency AML program using OSMRE's "discretionary share" under Section (402)(g)(3)(B), which is entirely separate from state and tribal non-emergency AML grant funding under Sections (402)(g)(1), (g)(2), and (g)(5). In FY 2011, OSMRE issued guidance to the states that the agency "will no longer declare emergencies." OSMRE has shifted responsibility for emergencies to the states and tribes with the expectation that they will utilize non-emergency AML funding to address them. The result of this shift is that states must utilize a portion of their P1/P2 AML funding to address emergency projects. We urge congress to restore emergency funding and allow states to use their limited resources to address high priority inventories.

**Maintaining the Current Priority Ranking Criteria of Priorities 1, 2, and 3.** States have the discretion to use their allocations from the Fund for projects falling into any of the three priorities.

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

**Maintaining the 30% Set-Aside Option for States and Tribes.** Pennsylvania has taken advantage of this provision to construct and maintain AMD treatment systems. It is important to maintain the 30% Set-Aside provision to maintain flexibility for use of funds.

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

**Continuing OSMRE's Watershed Cooperative Agreement Program (WCAP).** Since 1996, WCAP has distributed \$15.2 Million to 178 reclamation project constructed by non-profit watershed organizations. WCAP has helped to leverage Millions of dollars of additional state, private and foundation funding to projects implemented by non-profit groups.

**Continued Focus on Abandoned Mine Drainage Remediation.** Over 5,500 miles of Pennsylvania's streams are impaired by AMD and many are considered to be Priority 3, placing less emphasis on their remediation. It is widely accepted that the reclamation of impaired streams improves property values and brings much needed revenue to impoverished communities.

**Encouraging the Redevelopment of Abandoned Mine Lands.** As abandoned mine lands are reclaimed, they offer potential locations for economic development projects. By developing and marketing abandoned mine lands that would normally struggle to attract new investment, these "grayfields" can be turned into regional assets by creating economic opportunities, preventing sprawl, and conserving open space and natural resources.

For additional information about Title IV go to  
<http://amlcampaign.wpcamr.org>  
and

<http://www.wpcamr.org>

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