Written Testimony of Chris Wood
Trout Unlimited
Before the House Committee on Transportation and Infrastructure,
Subcommittee on Water Resources and Environment
March 28, 2006

Thank you for inviting Trout Unlimited here to testify today about impediments to abandoned mine clean up. My name is Chris Wood. I am the vice president for conservation at Trout Unlimited.

Trout Unlimited has over 160,000 members in 36 states. We have a long organizational history of engaging in stream clean-ups and restoration projects designed to improve drinking water, fisheries, and watershed health. In fact, each of our more than 400 chapters contributes well over 1000 hours of volunteer time to stream restoration projects every year.

I'd like to talk about three things today. First, TU's efforts to help recover lands and waters damaged by coal mining with an emphasis on work we conducted at Pennsylvania's Kettle Creek watershed. Second, TU's work to restore abandoned hard rock mines in the western United States, especially in Utah's American Fork canyon. Finally, I'd like to share with you ideas we have to foster more restoration.

Cleaning up abandoned mines may be the single most important, least addressed environmental challenges in the nation. Water accumulates and leaches out of many abandoned mines. The water is often highly acidic and laden with dissolved minerals – a deadly combination for aquatic life. Acid mine drainage and heavy metals contamination, the two primary threats caused by abandoned mine sites, can render streams lifeless and pose significant human health risks for miles downstream.

Kettle Creek

Since 1977 and the creation of the Abandoned Mine Reclamation Fund, more than $7 billion has been spent to help heal Appalachian and western coal fields. The fund is supported by a tax on coal mining operations of 35 cents per ton from surface mines, and 15 cents per ton from underground mines.

Few priority sites remain for clean-up in the western United States, and progress is being made in the East. Even with that progress, in the Appalachian region it is estimated that there are over 1.1 million acres of abandoned coal mine lands and over 9,000 miles of streams polluted by acid mine drainage, and many miles of dangerous embankments, high-walls, and surface impoundments.

TU, and countless other state and local groups are using the Abandoned Mineland Reclamation Fund and associated programs such as the Clean Streams Initiative to help heal coalfield communities.

In places such as the Kettle Creek watershed of north-central Pennsylvania, our restoration practices are being applied on a landscape level. We recently completed a 57 acre surface remediation and reclamation project to address the major source of acid mine drainage to Twomile Run, a key tributary to Kettle Creek.

In the Huling Branch, the largest tributary of Twomile Run, native brook trout are holding on in the higher elevation areas. Our work on the Huling Branch provides an example of how ecological restoration and economic opportunity can proceed hand in hand. The remediation plan involves the mining of coal that contributes to acid mine drainage that was left behind from earlier mining operations. The plan is to remove the crop coal for use in power plants, and the high quality coal reserves that supported walls and roof rock. TU and the Kettle Creek Watershed Association's follow-up reclamation work will virtually eliminate abandoned mine drainage.

TU is working with the Commonwealth of Pennsylvania, the Office of Surface Mining, and other partners to extend this combination of active and passive treatments, habitat restoration, and community education to the entire West Branch of the Susquehanna watershed. The West Branch drains 20 percent of the Commonwealth. The Governor is hoping this project will serve as an engine to drive economic opportunity and revitalization in the region.

The restoration of the Huling Branch and the Kettle Creek watershed would not have been possible without the existence of programs such as the Abandoned Mineland Reclamation Fund and the Clean Streams Initiative. Nonetheless, funding for these programs is not sufficient to address the full scope of the problem, and increased funding is essential to maximize the potential of abandoned coal mine clean-up.

Increasing funding available for the Clean Streams Initiative and enacting the long-term reauthorization of the Abandoned Mine Reclamation Fund would go a long way to helping communities by providing quality, family-wage jobs and revitalizing depressed areas while improving the quality of life for people.

American Fork

TU believes that every watershed we restore brings important benefits, regardless of the overall scope of the problem. From a fisheries and watershed health perspective, the issues associated with abandoned gold and silver mines are very similar to those of coal mines. Unfortunately, the geographic scope of the problem is staggering. EPA estimates that abandoned hard rock mines degrade nearly 40 percent of all western headwater streams. Estimates for cleaning up the problem range from $36-72 billion. The enormity and scope of the problem, have led to a collective sense of futility that has fostered inactivity in many places.

Like hundreds of other similar sites, the American Fork was heavily mined for silver, copper and gold. Active mining essentially ended in the early 1900s. Tailings, waste piles, and smelter wastes leach heavy metals including lead, zinc, arsenic, and cadmium

into the stream. In 2003, we decided to initiate a restoration of American Fork Creek. The American Fork is one of the State of Utah's most popular outdoor recreation areas. The area is located between Provo and Salt Lake City and more than 1.2 million visitors travel to the American Fork every year. The American Fork was also identified by the state of Utah as important to the recovery of Bonneville cutthroat trout.

By 2003, the Forest Service had reclaimed most of the mines on public land in the watershed, but those that remained were largely on private lands owned by the Snowbird Ski and Summer Resort.

The Pacific Mill site was identified by the federal government as the single largest source of pollution in the watershed. Our first priority was to complete the removal of mine spoils on private lands in the watershed. TU entered into an Administrative Order of Consent with EPA that is allowing us to move the tailings and piles of into a repository which will be sealed and revegetated. The repository will prevent water from leaching heavy metals from the waste materials thus improving the water quality in the river,

Lessons Learned

The two greatest needs that we can identify for increasing the scope and scale of abandoned mine clean-up is the lack of a dedicated funding source and the creation of a federal permitting process that encourages Good Samaritan restoration projects. Lack of money and fear of liability are significant barriers to local restoration efforts.

In nearly every watershed where abandoned mines affect drinking water and human health, degrade fisheries, or increase water filtration treatment costs, there is an almost limitless amount of energy from TU chapters, watershed groups, and communities to recover the health of their lands and waters.

Unleashing that energy in a positive way requires two basic elements: money and a permitting process. Funding is an overriding concern. Our experience in both Kettle Creek and the American Fork demonstrate that if you come to the table with resources, state and federal agencies can help to make things happen. In Pennsylvania, we rely heavily on federal funding through the Abandoned Mineland Reclamation Fund and other programs such as the Office of Surface Mining's Clean Streams Initiative. In addition, Pennsylvania has spent hundreds of millions of dollars in state money on watershed restoration through its Growing Greener program.

On the American Fork, we were able to use a grant from the Tiffany & Company Foundation and funding that Senator Bennett helped to make available through the Natural Resources Conservation Service to finance the clean-up of the Pacific Mine site. Cleaning up private lands on the American Fork is not overly expensive. The on-the-ground restoration will cost approximately $200,000. Hundreds, if not thousands, of other cleanups are possible if funding sources can be identified.

In the coalfields, the federal Abandoned Mineland Reclamation Fund has provided over $7 billion for recovery of areas affected by coal mining. That program needs long-term reauthorization, and programs such as the Clean Stream's Initiative need increased funding if we are to be able to maintain and increase the rate of recovery of Appalachia's mountain communities and streams. It is important to point out that there is no analogue to the Abandoned Mineland Reclamation Fund for gold and silver mining.

In fact, every single commodity developed off public lands – coal, wood fiber, oil, gas, and forage – has dedicated funding to pay for cleanup associated with production. The only commodity that lacks such a dedicated fund is hard rock minerals. As a result, organizations such as ours are dependent on cobbling funding from an array of private, state, and federal sources to get work done on the ground.

We pride ourselves on being entrepreneurial and nimble in identifying funding for abandoned mine cleanup. Our capacity to match funding with restoration projects, however, is dwarfed by the scale of the problem. Communities and organizations such as ours could get a lot more done if the resources were more readily available and in more obvious places than they are today.

The second impediment to making progress on the ground is the lack of a clear permitting process that allows for Good Samaritans to initiate cleanups. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Superfund are outstanding tools for holding polluters and other potentially responsible parties accountable for their actions. But on many of the sites where we work, there is no potentially responsible party, or the area doesn't rank high enough on the priority list to justify federal funding.

TU is still learning how to navigate the permitting and liability provisions of the Clean Water Act and CERCLA to facilitate clean-ups without risking liability that could jeopardize our financial future. The Clean Water Act regulates the discharge of pollutants into the waters of the United States. CERCLA provides broad federal authority to respond to releases of hazardous substances that endangered public health or the environment.

Trout Unlimited strongly supports these laws that are essential to clean water and healthy fisheries. The Clean Water Act, for example, was essential in prompting the restoration of Pennsylvania's Little Juniata River, which used to run black from industrial discharges. It is now an outstanding wild trout fishery.

CERCLA, for its part, is the reason that EPA, the State of Montana, ASARCO, and others were able to reach agreement on the removal of the Milltown Dam. As a result, within two years, the confluence of the Clark Fork and the Blackfoot rivers will be free-flowing and clean.

As important as they are, however, these laws are largely focused on holding polluters accountable for their actions. When those polluters are long gone, our experience is that

initiating hard rock reclamation projects is often problematic. Using existing tools to facilitate clean-up by pure Good Samaritans sometimes feels like pounding a square peg into a round hole. We are making progress, however, and hopefully the pace of our progress will continue.

The State of Pennsylvania has passed Good Samaritan legislation that facilitates abandoned mine clean up by limiting the liability associated with a well done reclamation. The State actively works with community groups to provide technical and financial resources, and has spurred dozens of cleanups.

Relative to hard rock mining the road is a little more complicated. After 12 months of negotiations, we were able to develop an Administrative Order of Consent (AOC) with EPA that protects TU from a liability perspective in a number of ways. Fundamentally, the AOC is designed to make TU's only obligation completing the actions required by the AOC and the associated work-plan, and eliminating any long-term liability for further work or clean-up costs at the site after completion of the tasks required by the AOC.

By arranging for the disposal of toxic mine waste, TU risked becoming a potentially responsible party, or "PRP" under CERCLA. CERCLA essentially has a standard of "if you touch it, you own it" relative to liability. It makes all PRPs at a site jointly liable for clean-up costs. The AOC deals with this by giving TU a covenant not to sue from EPA, which protects TU from any future enforcement action by EPA related to the site.

If at some later date EPA chooses to hold a PRP responsible for clean up costs, the AOC protects TU from being sued by that PRP for the costs of the cleanup. The AOC also caps TU's liability in the event that there is a problem during implementation of the project, and EPA decides to step in and complete the work itself. Normally, when EPA steps in to finish a clean-up for a party, that party is responsible for all of EPA's costs in completing the work. This protection is critical, as TU and many other would-be Good Samaritans do not have the financial resources to make an open-ended commitment of funds in the event of a problem.

Finally, the AOC obviates the need for TU to obtain multiple permits for its work on the site. Under CERCLA, no additional federal, state, or local permits are required for a clean-up. Under the AOC, TU does not have to obtain other environmental permits that might be required under state or federal law so long as it complies with a specific set of "applicable or relevant and appropriate regulatory requirements" drafted for the site.

In summary, the EPA and TU worked out a plan for completing the clean up and for complying with applicable regulatory requirements on the American Fork site. Once we complete the cleanup to the specifications of the plan, TU walks away. Too often the Clean Water Act and CERCLA are seen as impeding this kind of agreement.

Our belief is that our AOC provides a model that can be widely replicated across the landscape and alleviate many, if not all, of the liability impediments to cleaning up abandoned mines. We never would have completed the AOC without the involvement of

the EPA Office of Water and Administrator Johnson. Such extraordinary interventions shouldn't be required for projects as small in scale as the American Fork. Now that the first one is complete, we expect future AOCs will be easier to complete. It is also important to remember that the American Fork project is relatively simple – more complicated projects on the ground could pose more complicated regulatory issues and concerns that did not arise on the American Fork.

Administrator Johnson initiated a Good Samaritan Initiative to make the type of agreement we reached through our AOC more straightforward. Our position is that whether it is through new legislation or the creation of a new permitting system at EPA under existing law, there is a lot of good work that can be done to improve the quality of people's lives and the health of our lands.

Thank you for inviting me to testify today.