

**Testimony of Fritz Boettner  
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**House Committee on Natural Resources  
Subcommittee on Energy and Mineral Resources  
Legislative Hearing on H.R. 1731  
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## **I. Introduction**

### **1. Biography and qualifications**

Thank you Chairman Gosar, Ranking Member Lowenthal, and members of the Committee for the opportunity to testify on H.R. 1731, or the RECLAIM Act of 2017.

I am a Principal at Downstream Strategies, LLC, an environmental and economic development-consulting firm based in Morgantown, West Virginia. I hold a graduate degree in environmental management from West Virginia University and worked for a variety of planning and engineering firms in the northeast and western states. Downstream Strategies offers services that combine sound interdisciplinary skills with a core belief in the importance of protecting the environment and linking economic development with natural resource stewardship. We are currently engaged in projects within Appalachia that focus on identifying new and innovative opportunities for economic transition.

Downstream Strategies has been involved in planning a project that will reclaim High Priority abandoned mine land features in Mingo County, West Virginia and create long-term jobs on the site once it is reclaimed. The project has received funding through the Abandoned Mine Land Economic Development Pilot Program (“AML Pilot Program”). Downstream Strategies also helped to develop and publish a feasibility study for the potential use of RECLAIM funds in Virginia. I will describe both of those projects in greater detail in this testimony.

My experience as a planning consultant in Appalachia over the past 10 years has given me a unique perspective on a difficult problem. The economy of West Virginia and the region is struggling, and investing in creative place-based thinking is critical to a prosperous future. While no single approach will turn our economy around, the investments that provide the best solutions result from robust community engagement and decision-making. My career has taken me into small and larger communities across the region, and one common thread is that people have a sense of pride, hope, and place, and truly want to improve their community.

### **B. Overview of main points**

Abandoned coal mines pose serious hazards to human health and safety across the country. There is significant need to clean up pre-law Abandoned Mine Land (AML) features from Pennsylvania to New Mexico and disbursing the AML Fund presents a significant opportunity to address those AML problems. At a moment when coal-producing regions are faced with an uncertain economic future, H.R. 1731 presents vital economic opportunities.

Citizens and elected officials in impacted areas demonstrated strong local support for the \$1 billion AML component of the POWER Plus Plan proposed in 2015 and the RECLAIM Act of 2016.

As I understand the legislation, the RECLAIM Act of 2016 had two main purposes. These purposes correspond with the immediate and long-term economic benefits posed by the legislation:

1. Accelerate reclamation of abandoned mine lands by disbursing \$1 billion of the AML Fund to states and tribes, and
2. Leverage increased mine reclamation projects to spur long-term economic and business opportunities on reclaimed mines.

As written, H.R. 1731 maintains the first purpose but abandons the second.

The first purpose of H.R. 1731 is *to accelerate the disbursement of \$1 billion of the approximately \$2.5 billion AML Trust Fund*. This is *existing money*—collected from the coal industry over the past 40 years—and will not require any new appropriations. Not only is there an urgent need to direct this money to states and tribes to reclaim abandoned mines with these funds, there is also an urgent need for an economic boost in many struggling communities. Communities in West Virginia that have been upended by recent mass layoffs cannot wait another five (5) years for this investment. H.R. 1731 would immediately create jobs for laid-off coal miners and others in impacted communities, many of whom have earth-moving skills that make for a relatively easy transfer to reclamation work.

Downstream Strategies is involved with an aquaponics development project that is located on an AML site in Mingo County, West Virginia (“Mingo County Aquaponics Project”). The project will reclaim High Priority AML features and has received support from the AML Pilot Program. In the near-term, the project is expected to create or support jobs remediating the AML sites, constructing project facilities, and installing solar panels on-site. Cleaning up dangerous and polluting AML features, like the High Priority AML features at the site in Mingo County, also provides crucial safety, health, and environmental benefits.

The second purpose of the RECLAIM Act of 2016—and a stated but unfulfilled purpose of H.R. 1731—is *to leverage AML funds to spur long-term economic opportunities*. In addition to the immediate jobs benefits in struggling communities, H.R. 1731 could present significant potential long-term economic benefits. Unfortunately, the current language abandons provisions that tie mine reclamation with creating long-term economic projects on reclaimed High Priority mines.

The Mingo County Aquaponics Project is expected to create 10-12 full-time, permanent jobs and is a prime example of the economic diversification and jobs benefits presented by innovative mine reclamation investments. If scaled, investments like the project in Mingo County pose tremendous long-term jobs potential in communities seeking to diversify their economies amidst challenging economic circumstances.

For example, AML sites provide an opportunity for solar and/or wind energy deployment. Similarly, production of food has become increasingly decentralized. Pairing this market reality with agriculture and agroforestry’s capability to work as a restoration measure on mine-scarred lands not only makes intuitive sense, but also provides a real opportunity for communities to become providers for themselves, the region, and the country.

Yet, long-term economic opportunities may never come to pass under H.R. 1731’s existing language, which only applies the economic development nexus to reclamation projects of

Priority 3 sites, which make up *just a quarter* of the country's unreclaimed mines. We cannot reasonably expect the goal of tying mine reclamation with long-term economic development opportunities to be achieved without applying the economic development nexus to High Priority sites. It is also concerning that the "stakeholder collaboration" process and "location of projects" provisions do not apply to High Priority AML sites under H.R. 1731.

While public interest in the RECLAIM Act stems mostly from Appalachian states, the bill is intended to provide resources for AML reclamation as well as economic benefits to all states and tribes with an AML program. I hope that members of this committee will give serious consideration to ensuring that H.R. 1731 can be implemented in a way that allows states and tribes with diverse economic and geographic circumstances to take advantage of RECLAIM Act funds effectively while maintaining a main purpose of the bill: leveraging the reclamation of High Priority AML sites to optimize long-term economic development opportunities.

I am prepared to speak in detail today about the economic potential of reclaiming AML sites. I urge caution regarding the unrelated provision of H.R. 1731 that would move the Appalachian Regional Commission's headquarters. Its benefits are worth considering, but it does pose significant downsides. It is perhaps an issue that deserves greater consideration than it will receive attached to a bill with a separate purpose.

In H.R. 1731, language referring to "land adjacent" has been removed, which may result in unintended restrictions on the types of projects that can move forward. Congress should seek to find a solution that maintains the AML program's purpose to reclaim damaged land and water and avoids creating unnecessary limitations on states that could prohibit worthy projects with economic development benefits from being feasible.

Before and since the introduction of the RECLAIM Act of 2016, there has been strong bipartisan support among citizens and leaders in areas experiencing severe economic distress for a proposal to accelerate the disbursement of the AML Fund *and* strategically tie mine reclamation with long-term economic opportunities on reclaimed mines. It is a bold idea at a time of urgent need, both to address AML problems and to reinvigorate and diversify struggling local economies.

I speak from direct experience with the Mingo County Aquaponics Project when I say that investing mine reclamation funds in projects that leverage long-term economic opportunities can create immediate and long-term jobs in new and exciting sectors. One key advantage of leveraging AML funds is that it empowers communities to pursue a local economic future that they see fit—and provides tools to initiate projects that build on place-based assets and benefit local people. Creating innovative projects on reclaimed mines is a realistic proposition to help diversify local economies, and using existing funds to kick-start those projects is a massive opportunity that should not be missed. If Congress finds a way to maintain a crucial purpose of the bill—to leverage AML funds for long-term economic development—in a way that meets the circumstances of different states and tribes, then H.R. 1731 should be passed quickly.

## **II. Local support for proposal to disburse AML Fund & tie mine reclamation with long-term economic opportunities**

### **A. History of regional interest in opportunity presented by AML Fund and local economic diversification efforts in wake of recent economic shifts**

For years, citizens and elected leaders alike have been calling for the disbursement of the Abandoned Mine Land (AML) Fund to states and tribes. During a March 11, 2004 hearing before the Committee on Energy and Natural Resources of the United States Senate, then-Senator Jim Bunning of Kentucky explained, “Over \$1.6 billion is currently sitting in the fund, and I believe that the money should be going directly to the States instead of being used by the Federal Government for other purposes.”

Since 2012, a number of communities—including many located in Central Appalachia—have experienced severe job losses in coal and related industries as America’s energy landscape has undergone dramatic shifts.

My home state of West Virginia has been severely impacted by an ongoing decrease in coal jobs, and the negative economic impact is especially problematic in southern West Virginia. The 2015 West Virginia Economic Outlook projects a major lag behind the nation in employment, income, and population growth over the next five years. The report highlights that “significant job losses have occurred in the coal mining and mining support services industries” in the past few years, which contributes to the worst statewide percentage of adults in the labor force (only 54% of adults working or looking for work) in the nation.

Many of the communities that have experienced recent economic decline have begun to pursue efforts to diversify and strengthen their local economies. In February 2015, then-President Barack Obama proposed a set of initiatives called the “POWER Plus Plan” to support these efforts in areas that have been impacted by coal’s downturn. The POWER Plus Plan included a proposal to disburse \$1 billion from the federal AML Fund to invest in mine reclamation projects that would be strategically designed for long-term economic development.

### **B. Local governments support proposal to disburse \$1 billion from AML Fund and leverage investments for long-term economic diversification**

Throughout fall 2015 and winter 2016, the community-led movement to diversify local economies throughout Central Appalachia continued to grow. Communities across the states of West Virginia, Virginia, Kentucky, and Tennessee signaled support for federal initiatives that would assist communities struggling with the downturn in the coal industry. Twenty-eight (28) local governments and representative bodies passed resolutions in support of the POWER Plus Plan or federal action to invest in struggling coal communities, including the proposal to disburse \$1 billion of the AML Fund.

Local governments and representative bodies in Virginia include: City of Norton, Town of Wise, Town of Appalachia, Town of Dungannon, Town of Cleveland, Cumberland Plateau Planning District Commission, and Wise County. Local governments in West Virginia include: Fayette County, Lincoln County, Wyoming County, Kanawha County, Raleigh County, City of Morgantown. Local governments and representative bodies in Kentucky include: City of Whitesburg, City of Evarts, City of Vicco, City of Benham, City of Hindman, Benham Power Board, Appalachian Renaissance Initiative Student Senate, Pike County, Bell County, Harlan County, Letcher County, Floyd County, Perry County, and Knott County. Campbell County, Tennessee also signified support.

The following are excerpts from the resolutions passed by six (6) local governments, as well as the Student Senate of the Appalachian Renaissance Initiative, which is a representative body of seventeen school districts in eastern Kentucky:

“Whereas, the Town of Appalachia is a community in Southwestern Virginia, an area of many rich assets, including our land, mountains, water, music, heritage and people, who have for more than 100 years provided the coal that has fueled America;” — Town of Appalachia, Virginia

“Whereas, Harlan County and its residents are working everyday to build a community that is strong, healthy, and a place where future generations can continue to live and find meaningful work and where we can build on and celebrate our assets;” —Harlan County, Kentucky

“Whereas, the Appalachian region of Kentucky, including Pike County, is experiencing a dramatic economic transition with the decline of the coal industry, and is experiencing severe economic distress as coal mining and related jobs continue to decline;” — Pike County, Kentucky

“Whereas, we believe the transition to a future economy should be one that celebrates our culture; invests in communities; generates good, stable and meaningful work; is just and equitable; and restores our land and water;” — Appalachian Renaissance Initiative Student Senate, Kentucky

“Whereas, the POWER+ Plan could put laid off miners and other local residents to work reclaiming abandoned mines in ways that develop long-term economic opportunities in agriculture, forestry, recreational tourism, energy, and more on reclaimed mine sites” — Campbell County, Tennessee

“Whereas, the Town of Wise desires to invest resources to adapt to new economic circumstances facing our region and the increased federal funding targeting our region that would help to leverage local efforts.” — Town of Wise, Virginia

“Congress should appropriate the unappropriated balance of \$2.5 billion in Abandoned Mine Land Fund to support or create long-term economic opportunities in coalfield communities hardest hit by recent mass layoffs in the coal sector... Whereas, no less than \$222.6 million worth of AML problems currently exist in Kanawha County, and federal funds could be used to create local jobs and business opportunities by generating beneficial re-use of those lands and thereby also addressing the risks to health, safety, and future economic development that are posed by these abandoned sites in our county.” — Kanawha County, West Virginia

The groundswell of citizen action and passage of resolutions by local governments demonstrates both clear support for asset-based economic diversification and community development efforts among leaders in communities throughout Appalachia, as well as an endorsement of the proposal to disburse \$1 billion from the AML Fund to create long-term business and economic opportunities on reclaimed mines. Resolutions were supported by local elected officials from both major political parties, underlining bipartisan interest in the proposal to disburse \$1 billion from the AML Fund.

### **C. Local and regional bipartisan support for RECLAIM Act of 2016**

In February 2016, Congressman Harold Rogers of Kentucky led a bipartisan group of cosponsors in introducing the “RECLAIM Act of 2016.” The bill mirrored the \$1 billion mine reclamation proposal in the POWER Plus Plan by proposing to disburse money from the AML Fund and tying these investments with long-term economic development.

Local and regional momentum continued to grow among citizens and elected leaders after the bill had been introduced. Major regional newspapers in Kentucky and West Virginia had demonstrated support in 2015 for the \$1 billion mine reclamation proposal in the POWER Plus Plan, and in 2016 major newspapers in Pennsylvania, Tennessee, and California demonstrated support for—or editorialized on the benefits of—the RECLAIM Act of 2016. Republican

Governor Matt Bevin of Kentucky and Democratic Governor Tom Wolf of Pennsylvania both publicly endorsed the RECLAIM Act of 2016. A September 2016 poll conducted by Public Opinion Strategies—and commissioned by Sierra Club and West Virginia Center on Budget and Policy—found that eighty-nine percent (89%) of registered voters in seven (7) impacted states support the idea behind the RECLAIM Act of 2016. These states include Kentucky, Tennessee, West Virginia, Ohio, Indiana, Virginia, and Pennsylvania.

In summary, before and since the introduction of the RECLAIM Act of 2016, there has been strong bipartisan support among citizens and leaders in areas facing severe economic challenges for a proposal to accelerate the disbursement of the AML Fund and strategically tie mine reclamation with long-term economic opportunities on reclaimed mines.

### **III. Case study: economic & environmental benefits of aquaponics project on reclaimed High Priority mine site in Mingo County, West Virginia**

Downstream Strategies was hired by the Mingo County Redevelopment Authority to lead the implementation of an economic development project on a Priority 1 AML site in Kermit, West Virginia. The project “Aquaponics on Abandoned Mine Lands: Fish, Vegetables, and Renewable Energy Facility” will produce fish, vegetables, and renewable energy, as well as create permanent jobs and training for coal communities. The Mingo County Redevelopment Authority, in partnership with Refresh Appalachia and the Coalfield Development Corporation, developed this innovative economic development project, which is being funded through the federal 2016 AML Pilot Program.

Once completed, the project will produce fish and vegetables on a commercial-scale. It will utilize geothermal energy from a reclaimed abandoned coal mine, along with solar energy, to power a large commercial aquaponics facility. Aquaponics is a fish production system in which the waste produced by farmed fish supplies nutrients for plants grown hydroponically, which can in turn purify the water, creating sustainably produced healthy fish and vegetables for local and regional consumers.

The project will provide employment and training opportunities for laid-off coal miners and others in coal communities of Mingo, Wayne, and surrounding counties. The facility will provide direct employment for 10-12 full-time staff and serve as an aquaponics training center for the region. This pilot project will hopefully be the first of many aquaponics enterprises in the region and will build a ready workforce to operate and install systems across the coalfields.

By utilizing abandoned coal mine shafts for geothermal energy in combination with solar photovoltaics, the facility will drastically reduce energy costs, creating an innovative energy-efficient agricultural model that could be replicated throughout the coalfields. Remediation of the abandoned mine lands, construction of the production facilities, and installation of the solar arrays will provide additional employment and on-the-job training opportunities for displaced workers.

This project builds on assets that are under our feet to help develop a local food system that creates good-paying jobs and provides food for communities in need. The project will leverage assets from many organizations by integrating job training, economic diversification, and existing local food enterprises. It is a clear example of how projects funded by H.R. 1731 could drive asset-based economic diversification and create good-paying jobs in impacted communities.

The integration of these organizations and entrepreneurial systems will create an opportunity for long-term employment and set the stage for future replication, expansion, and job creation throughout the region. In this way, the project is part of a larger regional effort to support local communities building new economic options for themselves and to ensure that new opportunities benefit local people. The project was approved and began in November 2016, and the team expects the project to be in operation this year.

#### **IV. Innovative Mine Reclamation Feasibility Study in Southwest Virginia**

In early 2016, Downstream Strategies consulted for Appalachian Voices to profile fourteen (14) candidate projects for potential RECLAIM Act funding in Southwest Virginia. The project team also included mining and reclamation expertise from Coal Mining Engineering Services, a prominent engineering company located in Wise, Virginia.

We worked closely with community members and local officials to identify sites and projects that could benefit from funding through the RECLAIM Act. By working with these communities we were able to compile information, facilitate connections between key stakeholders, and provide support, all in the name of pushing forward marquee economic development projects. Our goal was to present potential projects in detail and lay the foundation for community-led economic redevelopment by the residents of Southwest Virginia.

Our project focused on developing and supporting ideas for reclaiming abandoned mine lands and putting them into productive re-use. It explains how fourteen (14) specific AML sites could be reclaimed, and explores specific business and economic opportunities for which the reclaimed site might be used. The results of our project offer a starting point and set of tools that communities and entrepreneurs in Southwest Virginia and beyond can use to pursue realistic mine reclamation projects with tangible economic and environmental benefits.

Our team prioritized fourteen (14) eligible sites from hundreds of locations with AML features across Southwest Virginia. For the purpose of evaluating the eligibility of these sites for RECLAIM funding, we utilized the United States Office of Surface Mining Reclamation and Enforcement (OSMRE) document, “Guidance for Eligible Projects to be Funded Under the Abandoned Mine Land Reclamation Economic Development Pilot Program for FY 2016.” In addition to eligibility for potential funding through the RECLAIM Act, this process took a number of other factors into consideration, including: the size of the site, the presence or absence of existing development efforts, the current ownership status, and the general suitability of the site for various development types. Efforts were also made to ensure a distribution of sites across the seven-county region. Following selection of the final fourteen (14) sites, the project team developed concepts for new economic development opportunities at each site. In many cases, choosing sites involved working with stakeholders within the community to understand the work they had already done, identifying their needs and gaps in those efforts, and endeavoring to prepare material and a project vision that could lead to a RECLAIM-funded project.

In other cases, we looked at the amenities of an individual site and set about imagining an alternative use. Once identified, we created profiles for each. Reflecting a conscious effort to diversify the economy, these projects cover a wide variety of industry sectors including renewable energy, agriculture and agro-forestry, recreation and tourism, and brick and mortar commercial/industrial. Some of these projects are quite advanced in their development—partners have been identified, plans and studies have been completed—but others are more

conceptual and, while resting on a solid foundation, will require hands-on coordination if they are to be realistically implemented.

The one thing each of these profiles share is that they represent concrete steps towards a positive, ground-up strategy to transition the economy of Southwest Virginia. The stakeholders identified by this assessment were residents of the region who are committed to these projects not just as economic actors and drivers, but also as community members and Virginians. Each of the projects is a beginning to the central task of diversifying the economy of a region that was instrumental to the rise of the United States as an industrial superpower. Appalachia has the capacity to build a new economy that creates prosperity for all of our residents, and the RECLAIM Act, if concerns with the language are addressed, can be a vital tool to fuel the ambitions and dreams of its residents.

The projects profiled in this Southwest Virginia study are estimated to represent well over \$16 million in cleanup costs and \$52.7 million in construction investments. Given that Virginia is currently estimated to receive approximately \$6 million per year under the RECLAIM Act, it is safe to say that Virginia would have plenty of options for using its funds for cleanup on sites that meet the requirements for economic development in an area affected by the downturn in the coal industry. The study also demonstrates a larger point: innovative mine reclamation projects, though still novel, are realistic and can dovetail well with larger community-led economic diversification efforts.

## **V. Concerns with H.R. 1731**

### **A. H.R. 1731 abandons a primary purpose of the bill: ensure that AML funds are leveraged to spur long-term economic opportunities**

As outlined in Section II, the original intent of the AML component of the POWER Plus Plan and the RECLAIM Act of 2016 was twofold: 1) to provide an immediate economic boost by speeding disbursement of \$1 billion of the AML Fund to clean up priority AML sites, and 2) to leverage that investment in a way that encourages long-term, diverse economic growth in coal mining regions. This policy has enjoyed strong local support from citizens and elected officials in areas with struggling economies. As written, H.R. 1731 accomplishes the first goal, but fails to leverage RECLAIM funds to encourage long-term, diverse economic development in coal regions. In addition, H.R. 1731 alters the language of the RECLAIM Act of 2016 to no longer prioritize economic development and stakeholder collaboration.

Under the RECLAIM Act of 2016, AML funds were to be used exclusively to fund the reclamation of pre-law abandoned coal mines (funds would not have been allowed to be used for general economic development purposes). However, all mine reclamation projects funded under the program were to be invested in reclamation projects that were designed to spur economic or business opportunities on a site once it was reclaimed. Under the RECLAIM Act of 2016, the reclamation of “High Priority” (Priority 1 and Priority 2) AML sites and Priority 3 AML sites were required to have an economic development nexus. Specifically, the bill prioritized funding for projects that “create favorable conditions for the economic development of the project site or create favorable conditions that promote the general welfare through economic and community development of the area in which the project is conducted.” (Call this the “economic development nexus”).



In addition, in order to catalyze the most innovative projects and to strengthen regional collaboration, mine reclamation projects would go through a stakeholder collaboration process that would involve stakeholders, with groups such as watershed organizations, non-profits, economic development authorities, chambers of commerce, local governments, and others, in the process of developing a project. (Call this the “stakeholder collaboration” provision). Community support is fundamental to the success of any project; the best projects will arise from the community itself and in partnership with developers and land and mineral owners.

Finally, under the RECLAIM Act of 2016, mine reclamation projects were to be targeted in locations that either: A) have declined economically in the past five (5) years due to the contraction of the coal industry, or B) have traditionally relied on coal and seen a reduction in the contribution of coal to the economy. (Call this the “location of project” provision).

H.R. 1731 no longer applies the economic development nexus, stakeholder collaboration process, or location of project provision to High Priority mine reclamation projects, and in so doing abandons one of the two main purposes of the bill, which would ensure that AML funds are leveraged to spur long-term economic projects.

While these provisions are still applicable to Priority 3 mine sites under H.R. 1731, Priority 3 sites make up only 26.5% of the total remaining abandoned coal mines across the country. Thus, under H.R. 1731, the economic development nexus would *not* apply for the vast majority—roughly three-quarters—of remaining abandoned mines.

While H.R. 1731 does not explicitly forbid projects that tie mine reclamation with economic development on High Priority AML sites, neither does current law under which the existing AML program operates. The existing AML program has been in existence for nearly 40 years, and very few AML projects have been designed to strategically leverage AML funds to create long-term economic opportunities. This is because the main directive given to state and tribal AML officials is to address the hazards to human health and safety posed by abandoned mines. That is what the public has asked our state and tribal AML programs to do. We cannot expect states and tribes to incorporate economic development planning into mine reclamation programs unless we incentivize them to do so. The current language in H.R. 1731 does not do that, and thus we cannot reasonably expect reclamation projects using RECLAIM Act funds to incorporate long-term economic development considerations under H.R. 1731.

The point here is that we cannot reasonably expect the goal of tying mine reclamation with long-term economic development opportunities to be achieved without applying the economic development nexus to High Priority sites.

Throughout 2016, concerns were raised about the implementation of the RECLAIM Act of 2016 for states and tribes whose circumstances differ with regard to the impact of coal’s decline on local economies and the distribution, type, and extent of unreclaimed AML features. Serious consideration should be given to ensuring that the RECLAIM Act can be implemented in a way that meets the legitimate needs and circumstances of various states and tribes. It is my hope that Congress can accomplish this goal without eliminating the economic development nexus for High Priority AML sites. Meeting these differing circumstances should be done in a way that maintains a main purpose of the bill: leveraging the reclamation of High Priority AML sites with long-term economic development. It is important that the law is crafted in a way that achieves this purpose effectively for states with different circumstances.

Citizens and local elected officials who live nearby and directly experience abandoned mines have demonstrated support for proposals that strongly tie together mine reclamation and economic development on reclaimed mines. What is apparent from the public discourse in Central Appalachia that has accompanied support for the POWER Plus Plan and RECLAIM Act of 2016 is that long-term economic diversification is at the core of support for the proposal. It is not just that citizens and local leaders would like to see the AML Fund disbursed, they are particularly interested in pushing forward projects that strategically re-use reclaimed mines for economic opportunities. The following are statements from affected citizens and elected officials regarding the long-term economic benefits of leveraging mine reclamation with economic development:

- “*By expanding the scope of the AML program to consider economic benefits*, Rogers and his colleagues have introduced a forward-thinking solution to one of the biggest challenges facing our region today,” explained Jack Kennedy, Clerk of Circuit Court for Wise County and Norton, Virginia, in a 2016 opinion article in the *Richmond-Times Dispatch*.
- “That money’s been laying there for years, and being able to access that money for the first time *to help diversify our economies* is going to be very very important,” explained Judge Executive Jim Ward of Letcher County, Kentucky in an interview with *WYMT News* in December 2015.
- “We could be creating jobs in farming, energy, tourism, and more on these reclaimed mines,” said Carl Shoupe, a retired coal miner in Benham, Kentucky, in a 2015 *Reuters* article about the AML component of the POWER Plus Plan.
- “Harlan County Judge-Executive Dan Mosley, a Democrat, said there are a lot of opportunities *to tie reclamation to economic development, and the need is critical.*” – *Lexington Herald-Leader*, 2016
- “Congress should appropriate the unappropriated balance of \$2.5 billion in Abandon Mine Land Fund to support or create *long-term economic opportunities* in coalfield communities hardest hit by recent mass layoffs in the coal sector... Whereas, no less than \$222.6 million worth of AML problems currently exist in Kanawha County, and federal funds could be used to create local jobs and *business opportunities by generating beneficial re-use of those lands* and thereby also addressing the risks to health, safety, and future economic development that are posed by these abandoned sites in our county.” – Commission of Kanawha County, West Virginia, 2015
- “Rogers’ committee said the intent for the funding is that states will speed up remediation of abandoned mine sites *‘with economic and community development end uses in mind.’*” – *Lexington Herald-Leader*, 2015
- “The RECLAIM Act is an imperative effort to help reinvigorate our hard-hit communities through *economic and community development*,” said Congressman Griffith in the Press Release accompanying the introduction of the RECLAIM Act of 2016.
- “The RECLAIM Act would take a portion of the money that now goes into the Abandoned Mine Reclamation Fund, which is dedicated to cleaning up mines closed before 1977, and *redirect it to economic development projects* in old coal communities...Rogers’ bill would make available \$200 million a year over five years for reclamation *projects that dovetail with economic development proposals* on or adjacent to the abandoned mine sites.... *it makes sense to twin economic development proposals with reclamation projects.*” – *Los Angeles Times*, 2016

The AML Pilot Program, which was appropriated \$90 million in the FY2016 federal budget, was meant to test the idea of mine reclamation projects tied to economic development. The aquaponics projects in Mingo County has received assistance through the AML Pilot Program

and demonstrates first-hand the potential of the program. Public discourse around the AML Pilot Program likewise has often centered on the economic development nexus at the core of the program's purpose and appeal:

- “The \$90 million pilot – which will be implemented in Kentucky, Pennsylvania and West Virginia – will provide coal communities with grants to reclaim abandoned mine lands *with economic development purposes in mind*, create new job opportunities and stimulate the local economy,” said Congressman Rogers in the Press Release accompanying the introduction of the RECLAIM Act of 2016.
- The AML Pilot Program is “to redevelop abandoned mine sites *with an eye toward boosting the economy*.” – *Lexington Herald-Leader*, 2015

The aquaponics project with which I have been involved in Mingo County is a prime example of a High Priority AML site that will be reclaimed and the site re-used to create long-term jobs. There is significant potential for creating permanent jobs with projects like this one. Maximizing that potential requires us to ensure that the economic development criteria are applied to all AML sites, not just Priority 3 sites.

### **B. H.R. 1731 moves the Appalachian Regional Commission headquarters**

The Appalachian Regional Commission (ARC) is a key partner for Appalachian states and communities seeking to create new economic opportunities. Downstream Strategies has and continues to work with ARC, and I hope there will be many more opportunities to collaborate with the ARC in the future.

H.R. 1731 would require the ARC to move its headquarters from Washington, D.C., to somewhere in the Appalachian region. The idea is intriguing, and the benefits of having an ARC office located in the region are worth considering.

However, there are potential problems with moving the agency headquarters. The ARC has only one major office: its headquarters in Washington, D.C. To move the headquarters, therefore, seems to require moving the entire agency and nearly all agency staff. A move of that magnitude would be costly, not only in dollars, but in the lost historical knowledge and experience of career staff who are unwilling or unable to move.

The ARC headquarters' current location in Washington, D.C. puts the agency in a position to coordinate with other key offices in the city such as the Office of Surface Mining Reclamation and Enforcement (OSMRE), the Economic Development Administration (EDA), the United States Department of Agriculture (USDA), the Department of Transportation (DOT), Congressional offices, and other entities. Removing the agency from the Capital could negatively affect that coordination and decrease opportunities for Appalachian communities, which are all the more important moving forward.

I urge caution in making such a decision with potential downsides of this magnitude. The location of the ARC headquarters is unrelated to the rest of the important issues in the RECLAIM Act. I believe that this question will better receive the consideration it deserves if it is considered independently, not as an attachment to a bill with a separate purpose.

### **C. H.R. 1731 eliminates “Adjacent Land” provision**

As I interpret it, the original intent of the RECLAIM Act of 2016 and the AML Pilot Program was to allow for projects to flow over from AML sites onto directly adjacent lands. In fact, the AML

Pilot Program guidance provided to states by the Office of Surface Mining Reclamation and Enforcement, explicitly lists lands adjacent to AML sites as eligible for projects.

It is necessary for projects covered under H.R. 1731 to clean up existing AML problems. The AML fund is a limited resource, and should be used for its intended purpose of reclaiming land and waters damaged by pre-1977 coal mining. A project should not exist entirely on adjacent land, which would fail to accomplish pre-1977 reclamation priorities. However, in order for some projects located on pre-1977 AML sites to be feasible, it may be necessary to allow the cleanup or earth-moving work to flow onto land or waters immediately adjacent to the AML site. Projects under H.R. 1731 must achieve cleanup priorities but should also consider long-term economic benefits. The worth of a project should thus be informed by both of these factors. Some projects with both mine reclamation and economic development purposes may only be feasible if earth-moving work is allowed to flow onto immediately adjacent areas. Based on my experience with Virginia AML study, allowing this could preclude worthy projects from being eligible.

In H.R. 1731, language referring to “land adjacent” has been removed. Congress should seek to find a solution that maintains the purpose of the AML program to reclaim damaged land and water, while at the same time avoids creating unnecessary limitations on states that could prohibit worthy projects with economic development benefits from being feasible.

## **VI. Conclusion**

There is an urgent need to disburse existing money in the AML Fund to states and tribes and to pair these funds with long-term economic diversification. If concerns with the language of H.R. 1731 are addressed, this legislation could provide coalfield communities with the means to reinvigorate their local economies by way of reclaiming and repurposing abandoned mines. There is tremendous potential with a capital investment of this scale.

Downstream Strategies’ experience with the AML study in Virginia demonstrates that innovative mine reclamation projects, though still novel, are realistic, have significant benefits, and can dovetail well with larger community-led economic diversification efforts. The aquaponics project in Mingo County is a prime example that leveraging the reclamation of High Priority mines with economic diversification can create immediate and long-term jobs.

If Congress finds a way to maintain a crucial purpose of the bill—to leverage AML funds for long-term economic development, including on High Priority sites—in a way that meets the circumstances of different states and tribes, then H.R. 1731 should be passed quickly.