Testimony of
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Oversight Hearing on the OSMRE's Abandoned Mine Lands Program

Chairman Gosar, members of the Committee, thank you for the invitation to testify at this oversight hearing about the administration and performance of the Abandoned Mine Land (AML) Program established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

At a subcommittee hearing on April 5, 2017, witnesses testified about how much has been accomplished under the AML program funded by the coal industry since 1977.[1] However, data brought forward or elicited through questions from members of the subcommittee disclosed a very important, yet unanswered, question: Why has more not been accomplished given the vast sums spent over the past 40 years? To the point: almost $8.5 billion has been spent from the AML Fund to date, but only $2.8 billion of priority coal AMLs reclaimed.[2]

Early Expectations and Actual Results

A National Academy of Sciences (NAS) mid-term review of the AML program found that most States expressed confidence they would complete reclamation of their priority 1 and 2 projects by 1992.[3] NAS projected all but six states would have enough funds from their state share alone to reclaim high priority 1 and 2 projects. Moreover, the total state shares of AML distributions alone appeared to be adequate to reclaim all priorities at an estimated cost of about $1.7 billion.[4] In short, at the time of the mid-term

[1] U.S. House, Committee on Natural Resources Subcommittee on Energy and Mineral Resources. *Legislative Hearing on H.R. 1731. April 5, 2017.*
[2] AML Reclamation Accomplishments, *DOI Budget Justifications FY 2018*, OSMRE, (Appendix p. 155).
[3] National Academy of Sciences (NAS), *Abandoned Mined Lands: A Mid-Course Review of the National Reclamation Program for Coal*, p. 65 (1986). NAS projected that by 1992 when the fee would expire the AML Fund would receive $3.3 billion from the coal industry. The NAS projection was close to the mark with actual receipts reaching more than $3.2 billion.
[4] NAS, pp. 154-155.

review of the program more than ample funds were available to address both the high priority coal sites and the low priority sites.[5]

Thirty years after that mid-term review, the results are not only disappointing but alarming. The coal industry has paid more than $9.5 billion into the AML Fund. Adding the interest earned on the coal company contributions brings the total receipts to almost $11 billon. Approximately $8.5 billion has been spent from the Fund. However, only $2.8 billion of the high priority (P1 & P2) and low priority (P3) abandoned coal mined lands have been reclaimed as of September 30, 2016, according to the Office of Surface Mining (OSM).[6] The $5.7 billion gap between spending and actual reclamation of priority coal AMLs reveals that only one of every three dollars has reached the priority coal projects they were intended to remediate.

This is not only a financial gap for the program but a credibility gap for the program managers. Accounting for the $5.7 billion gap is difficult, if not impossible, from the information OSM makes publicly available. We do know that $1.3 billion from the Fund has been transferred to various health care plans administered by the United Mine Workers of America. The Director of OSM attempted to break-out the remaining expenditures in response to questions from the House Committee on Appropriations on March 3, 2016. However, the Director's responses demonstrate that the agency fails to track expenditures with sufficient detail to identify the amounts used for much of the remaining expenditures. Among the many of the expenditures that were either estimates or unknown to OSM were the following:

- Money set aside by states for future use after the AML fee expired
- Administrative costs for state agencies and OSM
- Technical support for planning, compliance documentation, interagency review, NEPA, project design, and OSM oversight costs
- Expenditures on emergency projects
- Expenditures on non-coal or public works projects

Some of the reasons why OSM cannot account for these costs arise from shortcomings in the administration of the program. According to the Department of the Interior's Inspector General, the lack of oversight, the absence of sound data management, and an unreliable AML database have resulted in: (1) states diverting AML money to non-coal projects notwithstanding the continued presence of high priority coal projects in the state; (2) some states expending substantial sums on administrative costs without completing any AML projects; and (3) the inability to deliver accurate or useful cost accounting for AML projects.[7]

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[5] Congress' expectations were similar by identifying the purpose of the AML Fund as "just reclaiming abandoned mines" estimated to cost $2.3 billion. S. Rep. No. 128, 95th Cong. 1st Sess. 104 (1977). A 1989 DOI assessment estimated a median cost of $2.9 billion for coal AMLs. *An Assessment of the Abandoned Mine Land Reclamation Program* (Feb. 1, 1989 Draft).

[6] AML Reclamation Accomplishments, *DOI Budget Justifications FY 2018*, OSMRE, (Appendix p. 155).

[7] DOI Inspector General, *OSMRE Oversight of Abandoned Mine Lands Program* (Rep. No. 2016-EAU-007, March 2017). Apparently, planning and engineering costs, which can represent up to 20 percent of project costs, are not tracked in OSM's data system.

High administrative costs have also diverted funding from the Fund's core purpose. A General Accounting Office (GAO) report found that between 1985-1990 $360 million, or 28 percent, of the $1.3 billion spent during that period was used for Federal and State administrative expenses.[8] But even this amount may understate the percentage of funds used for administration since, as GAO noted, some States incorporate administrative expenses into their construction grants that are counted as reclamation project costs. As for Federal expenses, GAO reported that during that period OSM spent $137 million for administration while $100 million was expended on reclamation projects.

We could not identify any single source of information tracking the amount of AML fees used for administration over the lifetime of the program. However, even if one assumes that 20 percent—rather than 28 percent--of funds have been spent on administrative expenses, the $1.7 billion spent on administrative expenses exceeds the $1.66 billion spent to complete priority 1 and 2 coal projects during the first 25 years of the program.

Structural and Administrative Impediments to Success

The original allocation formula for AML fund distributions was not aligned properly with the core purpose of the program. Only 20 percent of the funds were allocated to states based upon historic production (pre-1977) which is the best proxy for measuring the need in terms of high priority coal projects. The other 80 percent was split among three other accounts (state share based upon post-1977 production; federal operations; rural abandoned mine program). Regardless of need or efficiency, the funds in these accounts could not be reallocated. The structural mismatch between the source of AML fees and the need for high priority coal projects became apparent when more coal production shifted to the west. Over time large portions of the AML receipts originated and remained in states where fewer or no priority coal AMLs exist.[9]

A secondary problem arises from the separation of the AML program into competing delivery mechanisms. Over its history, the AML fund has been allocated to Federal programs and State programs, and within each of those subdivided into special programs including the Rural Abandoned Mine Program, Emergency Programs, Appalachian Clean Streams Initiatives, State Set-Aside Programs, and Technology Development and Transfer Programs. All of these programs competed for funds without regard to the priority P1 and P2 coal AML sites. In effect, these multiple delivery mechanisms created exit ramps to divert funds away from the high priority coal inventory. And, all of these programs carry with them substantial federal and state administrative costs.

[8] General Accounting Office, *Surface Mining: Management of the Abandoned Mine Land Fund* (July 1991).

[9] For example, in 1981 about 60 percent of fee revenue came from production in eastern states with 40 percent from the western states. By 2001 the east-west revenue ratio was reversed.

Several of these structural flaws have been partially remedied through the 2006 amendments. But as the recent investigations by the Inspector General as well as AML program data reveal, loose administration and lack of discipline continue to plague the program with states' failure to adhere to the priorities, the continuation of set aside programs that divert money from the priorities, and duplicative and high administrative costs.

Proposals to Enable the Continued Diversion of Coal AML Fees

The AML Fund balance has been an attractive target for proposals to use coal industry AML fees for purposes distinct and apart from the remediation of coal P1 and P2 AMLs. Premature certification of states allowed the diversion of funds to non-coal and public works projects before completion of priority coal projects. The AML fund balance was cited by the NAS as a reason why states apparently saw no concern with using AML grants for lower priority projects before addressing P1 or P2 coal projects. The interest earned on the Fund balance—originally intended compensate the coal industry for the time value of its money sitting idle and to extend the life of the Fund without another fee extension—has been redeployed for use by certain health benefit plans.

The most recent proposals would accelerate the distribution of the Fund balance to promote economic diversification and development. Such proposals would take the Fund beyond its purpose and well beyond the competency of OSM and its state agency counterparts. Frankly, there does not appear to be any lack of reclaimed mined lands to achieve this purpose and the expertise for converting them into economic development opportunities already resides in numerous federal and state agencies.

OSM reports that almost 475,000 acres of reclaimed AMLs already exist.[10] There are at least five times more acres (2.5 million) of post-SMCRA reclaimed mines that can potentially serve economic development opportunities. Dozens of federal and state agency programs already support activities for economic development and diversification.[11] The Economic Development Administration (EDA) was established for the sole purpose of fostering regional economic development efforts in communities. EDA supports and funds multi-agency initiatives to drive economic growth, public-private partnership planning and technical assistance.[12]

In short, diverting more AML money away from its intended purpose will not foster economic diversification and certainly will perpetuate the sub-optimal results to date in reclaiming Priority 1 and 2 coal lands.

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[10] AML Reclamation Accomplishments, *DOI Budget Justifications FY 2018*, OSMRE, (Appendix p. 156). Testimony during the April 5, 2017, Subcommittee hearing claimed that 900,000 acres of *reclaimed* AMLs exist. *See* Statement of Robert Scott, Director, Division of AML, Kentucky Department of Natural Resources, p. 3. The wide discrepancy between what OSM and states report on remediated AMLs further confirms the absence of sound data information management protocols and systems.

[11] General Accounting Office, *Economic Development: Multiple Federal Programs* (Sept. 2000).

[12] Economic Development Administration, FY 2015 Annual Report (June 2016).

Considerations Going Forward

By the time the AML fee expires in 2021, the Fund would have been in existence for almost 45 years—30 years beyond its intended lifespan. Many of the issues surrounding the diversion and inefficient use of coal AML fees are not new. They have been continually identified in congressional hearings and outside reports going back over several decades.[13] The seven extensions of the fee since 1990 enabled the continuation of suboptimal business-as-usual practices with only one of every three AML dollars actually reclaiming P1 and P2 coal projects.

Focus and discipline needs to be brought to delivering the remaining AML funds to Priority 1 and 2 coal projects. The 2021 expiration of the fee provides an end-date which should carry a sense of urgency for reforming the administration of the program to deliver the funding to its intended purpose. Toward that end, a plan should be developed now for the distribution of AML funds to non-certified states accompanied by firm conditions on their use for actual remediation of P1 and P1 coal AMLs.

A plan designed to deliver the remaining AML funds received through 2021 should consider the following framework:

- All AML funds would be distributed to uncertified states according to the historic production formula that serves as the best proxy for actual need in terms of high priority coal AMLs.[14] The State and Federal share accounts would be eliminated.
- Each state would be directed to account for AML funds they received and sequestered in state set-aside accounts and those funds, with the earned interest, deployed to P1 and P2 coal lands.
- OSM administrative costs would be reduced and capped to align with a more limited federal role of collecting the AML fees and distributing them under the simplified historic production formula. [15]

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[13] See, e.g., U.S. House, Committee on Interior and Insular Affairs Subcommittee on Mining and Natural Resources, *Abandoned Mine Reclamation Program*, Hearings, April 18, 1989 & May 16, 1989 (Serial No. 101-7). Washington. Government Printing Office 1990; U.S. Department of the Interior, White Paper: *The Job's Not Finished* (April 25, 2003).

[14] Prior evaluations confirm that the AML Inventory lacks credibility in measuring accurately the presence of priority coal AML sites. Both state and OSM officials advised the GAO that because of inconsistencies in maintaining the inventory, it does not present an accurate picture of the relative reclamation needs of one state versus another and should not be used as a basis for allocating AML funds. GAO, *Information on the Updated Abandoned Mined Land Inventory* p. 15 (GAO/RECD-88-196BR, July 1088). Apparently, some states added projects and inflated the reclamation costs in order to game the future allocation of funds in their favor. *Id*. at 4. This gaming of the inventory likely explains why some states with relatively low historic coal production currently carry outsized inventories that cannot be reconciled with their historic coal mining. *See* OSM Cost Summary National (E-AMLIS, Feb. 10, 2016) (Kansas unfunded inventory almost equal to Kentucky; Montana unfunded inventory exceeds Ohio; Iowa unfunded inventory more than three times Tennessee).

[15] OSM management and oversight of the AML program has been ineffective so there is little reason to continue incurring these costs with four years left under the fee authorization. The target dates OSM set recently for addressing 11 shortcomings the Inspector General identified in AML management occur either on the eve of the AML fee expiring or several years thereafter. DOI Inspector General, *OSMRE's Oversight of the Abandoned Mine Lands Program*, pp. 16-20 (Rep. No.: 2016-EAU-007, March 2017).