

*Opposition*



November 13, 2019

The Honorable Alan Lowenthal  
Chairman  
House Committee on Natural Resources  
Subcommittee on Energy and  
Mineral Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Paul Gosar  
Ranking Member  
House Committee on Natural Resources  
Subcommittee on Energy and  
Mineral Resources  
1329 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Lowenthal and Ranking Member Gosar,

The National Mining Association (NMA) urges opposition to the current efforts to reauthorize the federal Abandoned Mine Land (AML) tax. Various bills have been introduced to reauthorize a program that for decades has allowed for the misallocation of industry tax dollars away from the intended purpose of reclaiming high priority abandoned coal mine sites towards lower priority projects and expenditures unrelated to coal reclamation entirely. According to the Office of Surface Mining Reclamation and Enforcement's (OSM) budget justification provided to Congress, to date over \$11 billion in tax dollars plus interest have been collected into the AML fund. Of that amount, almost \$9 billion has been spent from the AML Fund, but only \$2.7 billion of priority coal AMLs reclaimed.<sup>1</sup> The \$6.3 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 alarming allocation ratio was confirmed by OSM in testimony delivered before this Subcommittee in 2017.<sup>2</sup>

This is not only a financial gap for the program but a credibility gap for the program managers. Accounting for the \$6.3 billion gap is difficult, if not impossible, from the information OSM makes publicly available. We do know that \$1.5 billion from the Fund has been transferred to various health care plans administered by the United Mine Workers of America. OSM's annual budgets, the source upon which Congress relies when making authorizing and appropriations decisions, continue to demonstrate that the agency does not track expenditures with sufficient detail to identify the amounts used for much of the remaining expenditures. Among many of the expenditures that are either estimates or unknown to OSM include the following:

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<sup>1</sup> AML Reclamation Accomplishments, *DOI Budget Justifications FY 20198*, OSMRE, (Appendix p. 125).

<sup>2</sup> Oversight Hearing on The Office of Surface Mining Reclamation and Enforcement's Abandoned Mine Lands Program, Wednesday, June 7, 2017, Subcommittee on Energy and Mineral Resources, at 55.

- 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; and,
- 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.<sup>3</sup>

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.<sup>4</sup> 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.

In response to questions raised regarding OSM's failure to adequately track AML expenditures and ensure that AML dollars are being spent on priority projects, OSM testified in 2017 before this Subcommittee that it had completed the bidding process to retain a contractor for the purpose of fixing the highly flawed eAMLIS system— OSM's only publicly available central database intended to track the national inventory of AML priorities. Notwithstanding that this reform was proposed almost 30 years after the AML program was intended to expire and billions in tax dollars have gone unaccounted for, OSM has offered no indication that this effort, nor any other, has been undertaken to properly track expenditures and reallocate AML dollars towards priority projects.<sup>5</sup>

There is no reason to believe that if the AML tax is reauthorized that the program would be administered any differently than it has over the past 40 years. Focus and discipline needs to be brought to delivering the remaining AML funds to Priority 1 and 2

<sup>3</sup> 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**.

<sup>4</sup> General Accounting Office, *Surface Mining: Management of the Abandoned Mine Land Fund* (July 1991).

<sup>5</sup> Oversight Hearing on The Office of Surface Mining Reclamation and Enforcement's Abandoned Mine Lands Program, Wednesday, June 7, 2017, Subcommittee on Energy and Mineral Resources, at 74.

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 priority 1 and 2 (P1 and P1) coal AMLs.

We recommend the following framework for such a plan:

- All AML funds should 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.<sup>6</sup> The State and Federal share accounts should be eliminated;
- Each state should be directed to account for AML funds they received and sequestered in state set-aside accounts and those funds, with the earned interest, should be deployed to P1 and P2 coal lands; and,
- OSM administrative costs should 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.<sup>7</sup>

Proposals to allow for the continued misallocation of AML funds during a time when the industry is already under significant strain and is simply unsustainable.

Sincerely,



Rich Nolan

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<sup>6</sup> 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 technique likely explains why states with relatively low historic coal production currently carry oversized 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).

<sup>7</sup> OSM management and oversight of the AML program has been ineffective so there is little reason to continue incurring these costs with two 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).