Statement for the Record
U.S. Department of the Interior
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
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H.R. 2073, Appalachian Communities Health Emergency Act (ACHE Act)
H.R. 2505, Coal Cleanup Taxpayer Protection Act of 2021
H.R. 4799, Coal Royalty Fairness & Communities Investment Act
H.R. 7283, Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines Act (STREAM Act)
H.R. 7937, Revitalize, Enhance, and Nurture in Expanded Ways Our Abandoned Mine Lands Act, or the RENEW Act

Thank you for the opportunity to provide a written statement on behalf of the Office of Surface Mining Reclamation and Enforcement (OSMRE) on H.R. 2073, the Appalachian Communities Health Emergency Act (ACHE Act); H.R. 2505, the Coal Cleanup Taxpayer Protection Act of 2021; H.R. 4799, the Coal Royalty Fairness and Communities Investment Act of 2021; and H.R. 7283, the Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines Act (STREAM Act).

Background
Through the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Congress established OSMRE to achieve two basic goals:

- **First**, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining, and to restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses following mining.
- **Second**, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation resulting from two centuries of coal mining activities that occurred before SMCRA was passed in 1977.

The enactment of the Bipartisan Infrastructure Law (Pub. L. 117-58) further advanced these goals with a historic investment of $11.293 billion to accelerate the restoration of scarred coalfield communities and the reauthorization of the AML reclamation fee for an additional 15 years.

H.R. 2073 – Appalachian Communities Health Emergency Act (ACHE Act)
The ACHE Act instructs "[t]he Director of the National Institute of Environmental Health Sciences, in consultation with the Administrator of the Environmental Protection Agency and the heads of such other Federal departments and agencies as the Director deems appropriate" to conduct studies on the health effects on individuals in communities surrounding areas of

mountaintop removal (MTR) mining. The specific areas of the study include “surface coal mining that uses blasting with explosives in the steep slope regions of Kentucky, Tennessee, West Virginia, and Virginia.” Steep slope has the same definition as in SMCRA section 515(d)(4) (30 U.S.C. § 1265(d)(4)), *i.e.*, generally slopes greater than 20 degrees. Upon the study's conclusion, a publicly available report must be submitted to the Secretary of Health and Human Services (HHS). Upon receipt of the report, the Secretary must "publish a determination on whether mountaintop removal coal mining presents any health risks to individuals in the surrounding communities."

Pending the results of these studies and a determination by HHS that MTR does not pose any health risk to individuals in surrounding communities, any new permits or authorizations (or expansions thereof) required for such mining are prohibited. This prohibition applies to the Army Corps of Engineers or a state or tribe administering section 404 of the Federal Water Pollution Control Act, the US EPA or a state or tribe administering section 402 of the Federal Water Pollution Control Act, and the Secretary of the Interior or a state or tribe administering SMCRA.

Existing MTR operations must conduct continuous monitoring pending completion of the determination required by the Secretary of HHS to assess levels of air and water pollution, noise, and impacts on soil. In addition, such operations must evaluate how people living in affected communities might be exposed to such pollution. Monitoring results are to be reported to the Secretary of HHS monthly and subsequently posted by HHS to the internet within seven days of receipt. Failure of a mine operator to collect and submit the required data as previously outlined would prohibit any agencies previously listed from issuing any new permits for expanding such operations.

A one-time fee must be assessed through the Secretary of the Interior on MTR operations to cover the Federal cost of the required health study and MTR monitoring provisions.

Analysis

OSMRE shares the sponsor’s dedication to ensuring that the health of coalfield community residents is protected. The Department recognizes the concerns that would be resolved through the passage of this legislation and supports the better understanding of how MTR mining may be impacting the health and welfare of Appalachian coalfield communities. The proposed study is similar to one initiated through the National Academy of Sciences in 2016 (“Potential Human Health Effects of Surface Coal Mining Operations in Central Appalachia”), which was terminated before its conclusion in 2017. The proposed definition of MTR coal mining in H.R. 2073 is broader than the definition of MTR at 30 CFR 785.14. However, the proposed study appears narrower than the NAS study previously proposed, which covered general "surface coal mining operations." H.R. 2073 would limit the study to regions of Kentucky, Tennessee, West Virginia, and Virginia where surface mining operations use blasting on slopes greater than twenty degrees.

To implement this legislation, OSMRE would need to delineate the steep slope regions of Kentucky, Tennessee, West Virginia, and Virginia to determine the number and location of the impacted existing mining operations as well as the scope of the moratorium. The impact on the coal mining industry of a moratorium on the issuance of new permits in these areas (or

expansions of such permits) is unknown. Industry impacts will depend on the number of existing and potential mining operations affected and the length of time needed to complete the study required to make the HHS determination.

Residents of Appalachian coalfield communities have been advocates for such a government-sponsored study for an extended period. The potential benefits to such communities would depend on the study results and the determination by HHS.

H.R. 2505 – Coal Cleanup Taxpayer Protection Act of 2021
H.R. 2505 Strikes existing SMCRA section 509(c) (30 U.S.C. § 1259(c)):

> The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount or in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

OSMRE used these existing provisions to promulgate rules to allow for "self-bonding" and authorize a regulatory authority to establish an "alternative bonding system." H.R. 2505 would replace the existing language with a new section (c) that establishes criteria for an "alternative bonding system," otherwise known as a "bond pool."

The new criteria are:

- A report of bond forfeitures and reclamation costs provided by the regulatory authority covering seven years to include the amount of any deficiency between the amount of money collected to ensure reclamation and the actual cost of reclamation; in addition, an engineer's estimate of the reclamation costs for any mines where such fees have not been determined. (Presumably, these costs are all for areas where the bond has been forfeited to complete the reclamation due to the mine operator's failure to reclaim.)

- A five-year forecast demonstrating that any proposed bond pool would be financially sound based upon the annual per ton fee paid by mining companies participating in the pool, the past and projected financial performance of bond pool participants, coal industry market projections for the five year period, the estimated number of mining operators participating in the pool annually, and anticipated reclamation costs based upon those that are known, and an engineering estimate of such costs if unknown.

Analysis
These provisions would require OSMRE to obtain additional data from a regulatory authority before approving any alternative bond program. Additional information would include a seven-year history of bond forfeitures and reclamation costs and a five-year forecast proving that the

proposed bond pool will be financially sound. OSMRE would likely need to promulgate rules to implement such provisions.

Coalfield communities would benefit from the regulatory authority having sufficient monies in its bond pool to ensure timely reclamation in the event of mine operator default. In addition, sufficient funds in bond pools could ensure that acid mine drainage (AMD) emanating from forfeited mines could be treated as necessary. Timely reclamation and water treatment would return mined lands to usable conditions, benefiting individual landowners and the community.

HR 2505 adds a new subsection (f) to SMCRA Section 509 titled "Self-Bonding."
This section would prohibit the use of self-bonds. Neither the Secretary of the Interior nor the state regulatory authority would be able to accept a self-bond for a federal or state program. Existing self-bonds would need to be replaced with collateral or surety bonds at permit renewal or any significant permit modification.

The GAO issued a report dated March 2018 titled, "Federal and State Agencies Face Challenges in Managing Billion in Financial Assurances," with a finding that $1.2 billion in self-bonds, $7.8 billion in surety bonds, and $1.2 billion in collateral bonds were held for state and tribal lands reclamation. The GAO found that coal mining under SMCRA was the only type of energy production or mineral extraction activity that allowed companies to "self-bond." The report further concluded that bankruptcies of mine operators that were using self-bonds potentially transfers the cost of reclamation to the regulatory authority and the taxpayer. The report recommended that Congress consider amending SMCRA to eliminate the use of self-bonding.

While many States have required self-bonds to be replaced, section 509 of SMCRA, 30 U.S.C. § 1259, currently allows self-bonds. The recent severe declines in the coal industry have exacerbated the risk of insolvency, exposing the continued risk in allowing self-bonding. These provisions would eliminate the risk posed by self-bonding once existing self-bonds are phased out.

Coalfield communities would benefit from the improvements that alternative bonding systems could provide, thus ensuring more timely reclamation and the return of mine-impacted lands and water to usable conditions.

HR 2505 adds a new subsection (g) to SMCRA Section 509 titled "Bonds Issued by Surety."
This section requires OSMRE to issue rules establishing limits on surety bonds to minimize the risk of surety default resulting in unreclaimed SMCRA sites. The rules would require the establishment of a maximum quantity of surety bonds that could be issued as a percentage of the total reclamation bonds in any one state; a minimum percentage of surety bonds not related to SMCRA required to reinsure corporate surety bonds; minimum collateral requirements; and minimum cash assets needed as a percentage of reclamation surety bonds issued by any one company. Existing surety bonds would be required to be replaced or modified to meet the standards of the new regulations.

Subsection (h), titled "Collateral Requirements," would establish specific criteria for collateral to be used by explicitly eliminating the use of certain types of real property. It also requires a re-

evaluation every three years of the value of any nonliquid collateral as defined by the Secretary, including the first lien interest in real estate and equipment. Cash; letters of credit; certificates of deposit; federal, state, and municipal bonds; and investment-grade securities are exempted from this re-evaluation process.

Finally, subsection (i), titled "Executive Compensation," authorizes the Secretary of the Interior to include salaries and bonuses of officers and executives of any applicant or affiliated company to be used as collateral for reclamation bonds.

Analysis

These provisions would strengthen the remaining types of acceptable reclamation performance bonds (after elimination of self-bonds). As with the other provisions of H.R. 2505, OSMRE welcomes opportunities to improve the existing reclamation bonding system because it would benefit coalfield communities by giving regulatory authorities more tools to ensure timely and complete reclamation as contemplated by SMCRA. The Department supports this legislation because it will ensure better protections of coalfield communities from irresponsible mining.

H.R. 4799, Coal Royalty Fairness and Communities Investment Act of 2021

H.R. 4799, the Coal Royalty Fairness and Communities Investment Act of 2021, sets the coal royalty rate at no less than 12.5 percent of "assessment value," but allows the Secretary of the Interior (Secretary) to set a lower royalty rate for coal recovered by underground mining operations. The bill defines "assessment value" as the gross proceeds for the sale of Federal coal to a separate unaffiliated organization (also known as an "arm's-length contract") from the lessee. The bill also requires the Secretary to develop and publish a quarterly coal price index based upon the average market price of Federal coal at "assessment value," with the methodology for the calculation.

H.R. 4799 requires the Government Accountability Office (GAO) – in consultation with the Departments of the Interior, Transportation, and Energy – to review the Federal coal program every three years for 15 years. The bill also requires the Secretary to enter into an agreement with the National Academy of Sciences to conduct a study to determine the most equitable valuation method of coal produced on Federal lands. Finally, H.R. 4799 establishes the "Coal Area Economic Revitalization Fund," and deposits up to $75 million in coal revenues each year into that Fund, to be used for economic and workforce development assistance in communities that have been negatively impacted by changes in the coal economy.

Most of the uses of the Coal Area Economic Revitalization Fund are for programs outside of the Department's jurisdiction, such as grant assistance to impacted communities for economic and workforce development programs; financial assistance for the design, construction, and operation of large-scale projects to capture and store carbon dioxide emissions from industrial sources; and technical assistance and educational outreach. These programs would be administered by Departments outside of the Department of the Interior and we defer to those agencies on their implementation.

Analysis

The Department shares the Sponsor's interest in ensuring coal royalty payments consistently provide the taxpayer a fair return for natural resources and supports the goals of the legislation. However, the Department has some concerns about the practicality of implementing the methods proposed in the bill. Generally, the Department, through its Office of Natural Resources Revenue (ONRR), supports the use of "arm's-length" prices to best determine value for royalty purposes. The bill would require that, in the absence of an arm's-length contract, the sales value for royalty purposes would be set at a "price imputed by the Secretary." In situations where sales are among affiliates, ONRR generally supports tracing the chain of sales to the first arm's-length sale. In cases where no arm's-length sale occurs, ONRR generally supports using comparable arm's-length sales to value, for royalty purposes, a non-arm's-length sale. In most cases, arm's-length sales are the preferred and most accurate indicator of market value. The bill would shift the responsibility of valuing non-arm's-length sales of coal, for royalty purposes, from lessees to the United States, rather than requiring lessees to report a value by employing available market information.

H.R. 4799 would also require the Secretary to publish a coal price index quarterly in the Federal Register. While private entities publish coal price indexes using sales data that is voluntarily submitted by coal producers, in most cases there are only a few producers of a specific quality of coal available to provide data used to calculate a coal index price. Western coal is characterized by various qualities unique to individual basins and sold by a limited number of sellers. Furthermore, because there are so few sellers in any given basin, it would be difficult to establish an index price while ensuring the proprietary nature of lessees' reporting. This limits any one coal index's usefulness as an accurate representation of the value of coal in general and makes an average index wholly inaccurate. As such, index prices are rarely, if ever, used by coal producers to establish an arm's-length contract price.

The Department appreciates the intent of Section 5 of the bill to provide additional transparency to the public regarding management decisions for the Federal coal program. In response to a GAO review (GAO-14-140), the Bureau of Land Management (BLM) has implemented independent reviews by the Department's Appraisal and Valuation Services Office, Division of Mineral Evaluation on the fair market value determinations of coal prior to lease sales. Further, on August 20, 2021, the BLM published a Notice of Intent in the *Federal Register* to conduct a review of the Federal coal leasing program. That Notice served to inform the public of the BLM's intent to review the Federal coal program and to solicit comments from the public on whether the bonus bids, rents, and royalties received under the Federal coal program are successfully securing a fair return to the American public for Federal coal, and, if not, what adjustments could be made to provide such compensation. The BLM received 1,220 unique comments, 145 (12 percent) of which were related to fair returns and royalty valuation.

Lastly, the Department is supportive of the establishment of efforts to ensure impacted coal communities benefit from Federal coal development. However, we note that in FY 2021 only $33 million of the approximately $360 million in coal revenues were disbursed to the United States Treasury's miscellaneous receipt account and thus would be available for this fund. With the potential decline in coal demand and the limited amount of coal revenues, the sponsors should be aware that the intended revenues to be allocated under the bill may not be available for that purpose in future years.

The Department looks forward to continuing to work with Congress and this Committee on potential reforms to the federal coal program.

H.R. 7283 – Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines Act (STREAM Act)

The STREAM Act amends section 40701(c) of the Bipartisan Infrastructure Law (BIL) to authorize states and tribes receiving BIL grants to deposit up to 30% of their annual BIL grant funding into a state fund to be used for the abatement and treatment of the effects of acid mine drainage, as well as the construction, operation, maintenance, and rehabilitation of AMD treatment systems. Unlike the AML fee-based AMD set-aside program established under section 402(g) of SMCRA, 30 U.S.C. § 1232(g), the BIL funds would not be tied to a "qualified hydrologic unit.".

In addition, the STREAM Act requires recipients to update the existing AML inventory maintained by OSMRE to reflect the expenditure of the newly authorized AMD set-aside funds. Grant recipients would be required to include information in their annual grant reports specifying the status and balance of funds in their AMD accounts. Furthermore, the use of the newly authorized AMD set-aside funds would not be subject to any temporal limitations.

Analysis

OSMRE appreciates the opportunity this legislation provides to states and tribes to mitigate legacy water pollution, both now and in the future. The Department believes that this legislation will ensure that more waterways in coalfield communities are restored, providing clean, safe drinking water and recreation and tourism opportunities. Historically, both state and tribal AML programs and non-governmental organizations have funded the construction of AMD treatment facilities; however, those programs and organizations have also expressed reservations about building new treatment systems without a reliable source of funds to ensure the continued operation and maintenance of such systems. By providing a reliable source of funds, this bill would ensure the long-term viability of AMD treatment systems and benefit coalfield communities.

H.R. 7937 – Revitalize, Enhance, and Nurture in Expanded Ways Our Abandoned Mine Lands Act, or the RENEW Act

The RENEW Act would amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) by adding a new section requiring the Secretary of the Interior to establish, within one year of enactment, a program to provide additional funding to states and tribes to reclaim mine sites in which a bond was found to be insufficient to reclaim disturbed lands in accordance with SMCRA. The bill authorizes appropriations to aid states and tribes in the reclamation of Title V, post-SMCRA, permitted surface coal mine sites when the bond holders and responsible parties are unable or unwilling to do so.

The Department has not developed a formal position on the bill, which was introduced on June 3, 2022. OSMRE looks forward to the opportunity to review the introduced bill and conduct a more thorough analysis to develop a position.

Closing

The Department stands ready to assist with issues related to SMCRA, clean water, and improved environments. OSMRE will continue to work with states and tribes, the Interstate Mining Compact Commission, the National Association of Abandoned Mine Land Programs, local watershed groups, and other stakeholders to identify opportunities to address SMCRA priorities. OSMRE is fully committed to restoring legacy mine lands to productive and safe uses. Thank you for the opportunity to provide this statement for the record.