



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 30 2024

The Honorable Pete Stauber
Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Stauber:

Enclosed are responses to questions for the record submitted to the Department's witness, Glenda Owens, Deputy Director, Office of Surface Mining Reclamation and Enforcement, following the Subcommittee's November 14, 2023, oversight hearing titled: "*Examining the Biden Administration's Abandoned Mine Lands and Active Mining Programs.*" These responses were prepared by the Office of Surface Mining Reclamation and Enforcement

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela L. Barkin
Acting Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Alexandria Ocasio-Cortez
Ranking Member
Subcommittee on Energy and Mineral Resources

Questions for the Record
House Committee for Natural Resources
Subcommittee on Energy and Mineral Resources
Oversight hearing titled *Examining the Biden Administration's
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November 14, 2023

Questions from Chairman Pete Stauber

Question 1. At the hearing, Congressman Collins asked if the substantial increase in abandoned mine land (AML) funding from the Infrastructure Investment and Jobs Act (IIJA) is causing some states to divert resources from their Title V programs to their Title IV programs, in order to maximize the new AML funding available under the IIJA as quickly as possible. Deputy Director Owens responded that she was not aware of staff being pulled from Title V implementation for Title IV work.

- a. Can you confirm that the Department of the Interior is not placing more emphasis on AML projects, including by acquiring an unequal number of new or reassigned Department or OSMRE personnel for AML related work, at the expense of the Title V program?**

Response: The Office of Surface Mining Reclamation and Enforcement's (OSMRE) Title IV and Title V programs are separate, distinct, and each have their own independent appropriation. Title IV of the Surface Mining Control and Reclamation Act (SMCRA) is focused on Reclaiming Abandoned Mine Lands – Restoring the Environment; whereas Title V's program is focused on Regulating Coal Mines – Protecting the Environment.

Under Title IV, OSMRE oversees State and Tribal Abandoned Mine Land (AML) programs as they work to reclaim pre-SMCRA land and water hazards left behind by historic coal mining. OSMRE also provides state oversight of SMCRA's Title V Environmental Protection Program, which deals with primacy states' regulatory program efforts to ensure active coal mining is conducted in an environmentally responsible manner, consistent with SMCRA's requirements. Each program requires staff that have skills and expertise in specific areas necessary to fulfill the mandate of each Title. Although there is some overlap for certain positions, neither OSMRE nor the Department of the Interior (DOI) is placing more emphasis on one program over another. Each program plays a vital role in the balanced stewardship of reclaiming and protecting our Nation's lands and waters while meeting its need for energy. OSMRE is not reassigning agency staff from the Title V to Title IV program. Instead, it has hired—and is continuing to hire—additional staff to support the Bipartisan Infrastructure Law (BIL) AML work. These hiring actions are providing the resources needed to leverage and maximize this historic opportunity to expedite the reclamation of abandoned mine lands on an unprecedented scale.

- b. What steps is OSMRE taking to ensure that Title V program implementation will not be affected by the interest in rapid distribution and utilization of AML funding from the IIJA?**

Response: OSMRE continues to provide the necessary level of technical expertise and assistance, training, guidance, and oversight of State and Tribal regulatory programs to effectively implement the Title V program and achieve the goals outlined in SMCRA. OSMRE

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is committed to the success of the Title V program, as demonstrated by the 2024 Budget request, which proposes 181 Full Time Equivalent (FTE) positions to implement Title V. This FTE level represents a substantial increase from FY 22 levels and demonstrates OSMRE's commitment to ensure the Title V program is not adversely affected by Title IV activities.

Question 2. The shortfall in human resources has led to significant delays in permitting approvals and bond releases for coal mining operations in some states. These functions are needed to ensure sufficient coal supplies and proper completion of reclamation work.

Do you believe a fair and timely bond release process supports the ability of coal operators to keep reclamation activities current?

Response: OSMRE believes that a fair and timely bond release process supports timely reclamation. The federal bonding requirements at 30 CFR 800.40 establish such a process and are applicable to the Federal program states and Indian lands. Approved state regulatory program bonding regulations must be at least as effective as the federal regulations to ensure contemporaneous reclamation and mandate sufficient bonding to ensure reclamation according to the approved reclamation plan if a third-party contractor were to perform the reclamation. The incremental release of reclamation liability is a financial incentive for coal operators to contemporaneously reclaim the affected area and helps to support the completion of reclamation of each site.

Question 3. Could you identify five action items OSMRE is taking to increase efficiency in administering the IIJA AML program?

Response: OSMRE has taken numerous actions to increase efficiency in administering the Infrastructure Investment and Jobs Act AML funding, including:

- Issued guidance to the eligible states and Tribes in July 2022 and May 2023 concerning implementation of the IIJA (also known as the BIL) AML program. OSMRE is currently working to further refine that guidance for fiscal year 2024.
- Conducted an organizational review in support of BIL implementation that helped the agency assess and prioritize adequate and appropriate staffing resources.
- Created a BIL webpage on the OSMRE website that serves as the primary information clearinghouse related to the implementation of the BIL within OSMRE.
- Began the modernization and enhancement of the enhanced Abandoned Mine Land Inventory System (e-AMLIS) by deploying new features to reduce the number of data entry field errors and lessen the burden on state and Tribal partners to perform mathematical calculations throughout the lifecycle of AML reclamation projects.
- Published a revised OSMRE Directive AML-1, *Abandoned Mine Land Inventory Manual*, providing additional information and guidance concerning e-AMLIS entries for the Abandoned Mine Land Economic Revitalization (AMLER) Program, the BIL AML

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Program, and the *Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines* (STREAM) Act.

- Engaged with staff at the Department of Labor to provide informational sessions and training to states and Tribes to support the implementation of specific provisions of the BIL.

Question 4. Can funds provided for AML under IIJA and funds provided by the AML fee be separately tracked through adoption of accounting procedures? If not, why not? If so, why is OSMRE requiring separate grant applications for IIJA-sourced and AML fee-sourced funding?

Response: OSMRE is requiring a separate grant application for BIL AML funding to ensure that federal financial assistance requirements are met, which include the ability to:

- Track all expenditures of BIL AML funds;
- Ensure proper oversight of taxpayer dollars, facilitate audit reviews, and be responsive to reporting requirements; and
- Enhance transparency concerning the use of funds.

OSMRE will continue to work with the states and Tribes to develop procedures that minimize burdens on applicants that may result from separate BIL and fee-based AML applications.

Question 5. Since OSMRE's vetting of Abandoned Mine Lands Economic Revitalization (AMLER) projects is not mandated by law, why is OSMRE requiring this of states?

Response: OSMRE is required, as the Federal awarding agency, to ensure that grant recipients and sub-recipients use AMLER funds in accordance with applicable federal statutes and regulations. All projects supported by federal funds, including AMLER projects, are subject to review and analysis under various applicable federal statutes and regulations, such as, the Uniform Administrative Requirements, Cost Principles, Audit Requirements at 2 C.F.R. part 200; the National Environmental Policy Act (NEPA); the Build America, Buy America Act; and other applicable federal statutory and regulatory requirements. OSMRE, through its preliminary approval process, identifies at the earliest stage any concerns about the project proposals and ensures proposals will be in compliance with the statutory eligibility requirements and the applicable federal regulations related to grants. The structure of the preliminary approval process ensures that the AMLER program is consistently implemented across eligible states and Tribes and that recipients and sub-recipients are informed of all applicable federal statutory and regulatory requirements.

The vetting process, through an iterative process between OSMRE and the eligible state or Tribal program, also highlights unique situations requiring additional review, such as complex financial relationships; acquisition, improvement, or disposition of real property; acquisition of

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equipment; lease arrangements; and treatment of program income. As with fee-based AML and BIL AML projects, OSMRE reviews each project to determine whether it meets these applicable requirements, and if so, issues an Authorization to Proceed (ATP).

Question 6. When will OSMRE provide clear written guidance on how 2 CFR Part 200 requirements related to real property and property improvement will be implemented in the AMLER program?

Response: On December 11, 2023, OSMRE issued a letter to all state and Tribal AMLER programs clarifying its position on the use of covenants or liens protecting the Federal interest. Pursuant to 2 C.F.R. § 200.316, OSMRE has the discretion to “require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.”

Whether a covenant or lien must be filed will depend on the facts and circumstances surrounding each AMLER project. OSMRE will make every effort to inform recipients and subrecipients of the need to file covenants or liens no later than the preliminary approval of the project. Unless the recipient or subrecipient substantially modifies the project before the ATP is issued, OSMRE does not anticipate requiring covenants or liens for AMLER projects that have received preliminary approval as of December 11, 2023.

Question 7. Please provide a detailed, step-by-step breakdown of OSMRE's decision process for state program amendments and state reclamation plan updates, including the chain of approval among agency and other Department of the Interior (DOI) personnel, and a brief explanation of each step in the approval process a program amendment or reclamation plan update must undergo before it can be approved.

Response: The program amendment and reclamation plan update processes are outlined in OSMRE Directive STP-1, *Processing of Proposed State/Tribal Regulatory Programs and Abandoned Mine Land Reclamation Plans; Amendments; and Part 732 and Part 884 Notifications*, and is available at www.osmre.gov/laws-and-regulations/directives.

Question 8. What is OSMRE's plan to eliminate the backlog of program amendments and pending reclamation plan updates? Will this plan ultimately reduce the backlog to zero?

Response: OSMRE is prioritizing pending program amendments and has established a “Tiger Team” approach: bringing together all the experts needed to work the complex policy decisions quickly and effectively. Other actions to reduce the backlog include OSMRE staff reviewing the entire program amendment process and determining where OSMRE can streamline and gain efficiencies.

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Question 9. In your testimony before the committee, you referred to federal court decision(s) requiring that an environmental impact statement (EIS) be prepared for the Black Butte Mine's Federal Mine Plan. Please identify these court decision(s), and explain why they are applicable to the decision to require an EIS for Black Butte's mine plan.

Response: Several recent court rulings have affected our environmental analysis for mining plans. These include a Tenth Circuit Court of Appeals decision bearing directly on DOI's analysis of greenhouse gas emissions from fossil energy projects and related determinations of "significance" for purposes of NEPA. *See Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1040 (10th Cir. 2023) (citing *350 Montana v. Haaland*, 50 F.4th 1254, 1273 (9th Cir. 2022)). When applied to the facts presented by the Black Butte mining plan, that caselaw led OSMRE to conclude that a more thorough environmental analysis was warranted to ensure that the environmental document complied with NEPA.

Question 10. Prior to OSMRE analysis of a mine plan, prospective coal mining must undergo at least two reviews under the National Environmental Policy Act (NEPA) at the Bureau of Land Management (BLM) - one regarding a Resource Management Plan, and another during the coal leasing process, both of which require full analysis of potential environmental impacts of the proposed mining operations.

- a. Why does OSMRE need to conduct a third, separate NEPA analysis during its mine plan approval process?**

Response: In most cases, OSMRE participates as a cooperating or co-lead agency during the BLM's Resource Management Plan (RMP) and leasing environmental analysis with an intent to adopt BLM's environmental analysis when possible. Only at the mining plan stage are site specific details available for the NEPA analysis that OSMRE conducts at this stage. In addition, circumstances may have changed that require supplemental information.

- b. If a third NEPA review is truly required, why can't OSMRE rely on the NEPA analysis conducted previously by BLM?**

Response: As much as possible, OSMRE relies on prior analyses conducted by the BLM through incorporation by reference or supplementation. In some cases, OSMRE can adopt the BLM's environmental analysis document and issue its decision without developing a new environmental assessment or environmental impact statement. However, for reasons presented in the previous response, OSMRE may need to supplement the BLM or appropriate land management agency analysis to account for new information.

- c. How is the requirement for three separate NEPA reviews of the same prospective**

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mining impacts consistent with “one federal decision” principles?

Response: As discussed previously, OSMRE, as much as possible, incorporates prior analysis conducted by the BLM through adoption, incorporation by reference, or supplementation. Due to the timeline from RMP to mineral leasing and then from leasing to the preparation of a mining plan or resource recovery plan, however, additional information may become available (such as court decisions or changes to resource conditions on the ground) that requires OSMRE to supplement the BLM NEPA analysis to ensure the environmental analysis accurately and adequately contains any change to the information, methods, or guidance used to develop the initial NEPA analysis.

Executive Order (EO) 13807 - also known as *One Federal Decision* - was rescinded by President Biden on January 20, 2021, through EO 13990. OSMRE still strives to conduct its NEPA reviews in a single environmental document with other federal and cooperating agencies. OSMRE will also comply with the Fiscal Responsibility Act of 2023 (Section 107(b)) requiring lead and cooperating agencies to evaluate a proposal in a single environmental document to the extent practicable, and as recommended by the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1501.7(g)).

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Questions from Chairman Bruce Westerman

Question 1. Please provide a list of pending action items in your agency's purview, including mine plan amendments and state plan amendments, that require analysis under the National Environmental Policy Act by OSMRE. In this list, please include every applicable specific action item, when it was submitted by an applicant to OSMRE for NEPA analysis, when that review was actually initiated at OSMRE, what threshold of NEPA analysis has been determine appropriate (i.e. environmental assessment or environmental impact statement), what the current status is for each item in regards to NEPA review, and if those items are on track to have their NEPA review completed in accordance with the one year (for environmental assessments) and two year (for environmental impact statements) timelines as proscribed by the Fiscal Responsibility Act.

Response: NEPA analyses are not conducted for state plan amendments; only mining plan and mining plan modifications.

Attached is a list of pending NEPA actions as Appendix A.

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Questions from Rep. Grijalva

Question 1. During the hearing, Representative Hageman stated that the Office of Surface Mining Reclamation and Enforcement's "environmental justice requirements" make it more difficult for certain states to secure federal funding. In response, you said that OSMRE is encouraging states to follow the environmental justice guidelines. Could you please expand on your response? Do OSMRE's guidelines affect distribution of abandoned mine land funds from the Infrastructure Investments and Jobs Act? Do these guidelines affect funding to states?

Response: OSMRE guidelines on environmental justice do not impact the distribution of BIL AML grants to States and Tribes, as the BIL itself directs the allocation of grant funding. Per the statute, distribution amounts are based on the number of tons of coal historically produced in each state or from the applicable Indian lands before August 3, 1977. OSMRE relied on the March 1980 Final Environmental Impact Statement (OSM-EIS-2) to ascertain these amounts and then calculated each state's or Tribe's percentage of total historical coal production. (See response to Rep. Ocasio-Cortez).

In accordance with Executive Order 14008, OSMRE's BIL guidance encourages states and Tribes to prioritize projects that support the Justice40 Initiative goal of providing 40 percent of the overall program benefits to disadvantaged communities. These communities have suffered disproportionate impacts from environmental hazards, including due to historic coal mining. Cleaning up legacy pollution such as abandoned mine lands helps communities eliminate dangerous environmental conditions and pollution while creating job opportunities.

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Questions from Rep. Ocasio-Cortez

Question 1. The Office of Surface Mining Reclamation and Enforcement has provided detailed guidance to the states on how to prioritize projects that employ former coal workers and address environmental injustices. What has been your experience so far in implementing these guidelines? How can we ensure that states are incentivized to follow this guidance?

Response: States and Tribes are encouraged, as indicated in the May 2023 BIL AML Guidance, to prioritize projects that employ former coal workers and that support the Justice40 Initiative goal of providing 40 percent of the overall program benefits to disadvantaged communities. OSMRE coordinated with CEQ and the United States Digital Service, to integrate data from the coal AML national inventory system (commonly known as e-AMLIS) into Version 1 of the Climate and Economic Justice Screening Tool (CEJST) that was released by CEQ on November 22, 2022. This information is now available to states and Tribes as the primary resource to help identify and fund BIL projects in disadvantaged communities, including those with displaced coal miners.

OSMRE is also coordinating with and advising DOI's BIL Infrastructure Team as it explores how to incentivize and support the states and Tribes in employing former coal industry workers where possible.

OSMRE has added specific socio-economic performance measures for states and Tribes to report in the e-AMLIS inventory system for problems reclaimed using BIL AML funding:

- Projects completed within an identified EJ40 zone (i.e., disadvantaged community): Number of AML projects completed in disadvantaged/distressed communities.
- Residents with reduced exposure potential (EJ40; i.e., either within a disadvantaged communities or exposure reductions that accrue to disadvantaged communities).
- Number of problems abated (either within disadvantaged communities or percent of benefits that accrue to disadvantaged communities, labeled as EJ40): The number of AML problems abated in an identified EJ40 zone (disadvantaged community) against total AML problems abated during the fiscal year (under all AML funding sources).
- Jobs created for displaced coal miners, including in disadvantaged communities.

OSMRE will review these issues and state responses as a component of our annual oversight evaluation process and as part of the data analytics under the Evidence Act review for the BIL AML program.

Appendix A
As of March 19, 2024

Project Name	State	Proposed Action	Submitted to OSMRE	OSMRE Initiated	Current Status
<i>Environmental Impact Statements</i>					
Bull Mountains Mine	MT	23.5 million tons of additional saleable federal coal.	2/10/23 - date of court order	8/7/23 - date of NOI publication	Developing draft EIS for publication and public comment.
Black Butte	WY	10.2 million tons of federal coal underlying 450 acres of private surface lands.	4/29/21 - date OSMRE decided that the proposed action required a federal mining plan modification	NOI TBD	OSMRE notified Black Butte that it intended to prepare an EIS in lieu of an EA on 10/3/2023. OSMRE is preparing an MOU, NOI for publication, and schedule for the EIS.
Spring Creek	MT	184 acres of surface disturbance, 51.5 million tons of federal coal.	2/3/21 - date of court order	3/17/22 - date of NOI publication	Developing draft EIS for publication and public comment.
Rosebud Mine Area F Supplemental EIS	MT	4,260 acres of surface disturbance, 70 million tons of federal and private coal.	9/30/22 - date of court order	9/30/22 - date of court order (did not publish a NOI for the Supplemental EIS)	Developing draft EIS for publication and public comment.
Skyline Mine (BLM is lead agency; OSMRE is a cooperating agency)	UT	10.8 million tons of federal coal underlying 760 acres of the Manti-La Sal National Forest.	Pending	Pending	Pending BLM to publish NOI to prepare EIS; BLM must lease the coal and the state must issue a SMCRA permit before OSMRE can analyze the mining plan.
Heavener Coal Leasing (USFS is lead agency; OSMRE and BLM are cooperating agencies)	AR	3,076.61 acres and 11.4 million tons of federal coal beneath National Forest Service Lands; life of the mine is 15 years.	Pending	Pending	USFS published Notice of Intent to prepare EIS on 12/26/23 with a 30-day public comment period; USFS must amend its plan and issue a compatibility decision and BLM must lease the coal before OSMRE can approve a permit and analyze the mining plan.

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Project Name	State	Proposed Action	Submitted to OSMRE	OSMRE Initiated	Current Status
West Antelope	WY	857 acres and 15.8 million tons of federal coal through 2035. The operations within the proposed 857-acre project area are estimated to disturb a total of 771 acres	July 2019 - date OSMRE decided that the proposed action required a federal mining plan modification	NOI TBD	EIS MOU pending signature by NTEC
Falkirk (OSMRE is a joint lead agency with BLM)	ND	8 million tons per year through 2026	Pending	Pending	Applicant has been notified that BLM intends to prepare an EIS.
<i>Environmental Assessments</i>					
Coyote Creek Supplemental EA	ND	5.2 million tons of federal coal underlying 320 acres of private surface	October 2020 - date BLM issued lease for federal coal	October 2020 - date State regulatory authority initiated permitting action for incorporation of leased federal coal	DOI approved MPDD on March 14, 2024. Supplemental EA posted to OSMRE website.
Freedom (OSMRE is a joint lead agency with BLM)	ND	32 million tons through 2045	Pending	Pending	Developing draft EA.
Center Mine	ND	6.13 million tons of federal coal underlying 630 acres of private surface lands through 2037. Supplemental EA supports three permit revisions (Rev 17, Rev 42, and Rev 8)	06/02/2021 - date of OSMRE determination letter that the proposed action required a federal mining plan modification	07/29/2021 - MOU executed for preparation of an EA	Supplemental EA posted May 2023 on OSMRE website for Rev 17. Same Supplemental EA will be used for Rev 8. North Dakota Public Service Commission approved Rev 8 on March 5, 2024. Rev 8 MPDD currently being prepared.