EXAMINING THE BIDEN ADMINISTRATION'S ABANDONED MINE LANDS AND ACTIVE MINING PROGRAMS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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OVERSIGHT HEARING ON EXAMINING THE BIDEN ADMINISTRATION'S ABANDONED MINE LANDS AND ACTIVE MINING PROGRAMS

Tuesday, November 14, 2023
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 10:15 a.m. in Room 1324, Longworth House Office Building, Hon. Pete Stauber [Chairman of the Subcommittee] presiding.

Present: Representatives Stauber, Fulcher, Tiffany, Rosendale, Collins, Westerman; Ocasio-Cortez, and Kamlager-Dove.

Also present: Representative Hageman.

Mr. STAUBER. The Subcommittee on Energy and Mineral Resources will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member.

I ask unanimous consent that the gentlewoman from Wyoming, Ms. Hageman, be allowed to participate in today's hearing.

Without objection, so ordered.

I now recognize myself for an opening statement.

STATEMENT OF THE HON. PETE STAUBER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. STAUBER. Today, we will discuss the programs that manage two important aspects of coal mining in the United States: the regulation of active coal mining and the cleanup of coal sites abandoned before modern environmental protections, known as Abandoned Mine Lands, or AML.

These activities are subject to the same Federal statute, the Surface Mining Control and Reclamation Act of 1977, or SMCRA. SMCRA is administered by the Office of Surface Mining Reclamation and Enforcement, or OSMRE, at the Department of the Interior.

The AML and active mining programs have functioned well for decades. But, unfortunately, recent years have seen a major increase in delays for needed mine approvals, the creation of overly-burdensome administrative guidance, and new Federal requirements outside of SMCRA that have made it harder and harder for states and tribes to develop their resources and clean up AML.

Since the passage of SMCRA, AML cleanup has been funded by a fee on each ton of coal produced. These funds are then distributed to the states and tribes as grants, many of which run their own AML programs. This funding source was recently augmented by the Infrastructure Investment and Jobs Act (IIJA), which reduced the fee by 20 percent and added an additional $11.3 billion in taxpayer funds to go towards AML cleanup.

The new influx of funding could do a lot of good in assisting AML work. But, unfortunately, many states across the country have struggled with new so-called "recommendations," which OSMRE has added on top of its existing requirements in statute. States have also been given new administrative tasks in order to apply for IIJA funding, making them spend more time and resources on paperwork instead of filling the hole in the ground.

When it comes to active mining, projects coast to coast are facing delays in the approval process. New Federal coal leasing is, unfortunately, under moratorium. However, even projects exempt from the leasing ban have run into major delays. Some of these approvals, such as a mine plan amendment to expand production at a site in Wyoming, have already gone through multiple rounds of NEPA but continue to languish somewhere at the top levels of OSMRE and the Department of the Interior.

At the core of both the AML and active mining programs is the idea of state primacy. Under primacy, a state or tribe has been granted delegated authority from OSMRE to run their own programs. This long-standing authority under SMCRA is only granted to states and tribes with regulations at least as stringent as Federal standards. This authority was created in 1977 very deliberately recognizing that states and tribes have both the technical expertise and local knowledge necessary to find, prioritize, and select AML projects for cleanup, as well as manage other aspects of coal production specific to that state's geology.

Any attempts by OSMRE to supersede that authority such as their proposed dam safety rule and 10-day notice rule would not only be unwise, but would go against one of the most important tenets of the coal program's defining statute.

I look forward to hearing from our witnesses today about their experiences, so that we can move towards a more transparent and efficient running of these programs.

I am now going to yield to my colleague, Ranking Member Ocasio-Cortez, for her opening statement.

STATEMENT OF THE HON. ALEXANDRIA OCASIO-CORTEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. OCASIO-CORTEZ. Thank you, Mr. Chair, and thank you to our witnesses for coming here today.

Coal workers take well-deserved pride in building a prosperous U.S. economy and the American middle class. A century ago, coal workers fought and died to win workplace protections like the weekend that we now see as commonplace. And every American has a debt to coal workers for that fight. These workers want well-paid union jobs that provided good work for generations of families.

But for around 15 years now, coal mining itself has been on a steep decline. In fact, no new coal plants have come on-line in almost 10 years, and nearly a third of operating coal plants are slated to close by 2030. Several factors are at play. Competition from natural gas and the rise of low-cost renewable energy has led to the closure of hundreds of coal mines. When coal plants retire, they are more often replaced by new renewable energy and not a new coal plant.

And while the coal industry once helped communities across the country prosper, it also contributed to devastating health, environmental, climate, and long-term economic impacts. The black lung epidemic has ravaged miners. An estimated one in five tenured miners in central Appalachia has black lung disease, a devastating and potentially fatal illness caused by inhaling dust underground.

Meanwhile, cancer occurs at significantly higher rates in communities with mountaintop removal mining. Water pollution from abandoned coal mines has devastated thousands of miles of streams and rivers. Un-reclaimed mountains of waste rock create looming threats of landslides for homes downhill. Carbon emissions from burning coal are responsible for about 40 percent of global emissions from fossil fuels, a significant contribution to the climate crisis that simply cannot be ignored.

And due to coal's decline over the last 10 years, more than 60 coal companies have gone bankrupt, including companies that were once some of the largest and most prosperous. When coal companies file for bankruptcy, they too often spin off their unproductive mines, and this is what we should be focusing on and talking about today. They drop their obligations to clean up old mines, and they stop paying health care and pension obligations to the communities and the very workers who gave up so much of their lives in service to these companies. In doing so, these companies break their promise to neighboring communities and everyday Americans who expected clean water and air, and to the workers who risked their well-being and expected these benefits for the rest of their lives. They were promised them.

In 2017, seeing this crisis unfold, Congress and this Committee stepped in to guarantee health care benefits for more than 22,000 retirees and widows when coal companies left them behind. In 2019, we again stepped in to protect mine workers' pension benefits for 100,000 more. In doing so, we worked closely with the United Mine Workers of America, and made sure that no worker was left behind. I am proud of the work that we have done with UMWA to protect these essential services. But to be clear, it was the public, not the coal companies, who picked up the tab for the coal industry's failures, the public.

And now, the remaining coal companies, which are all at risk of bankruptcy in a dying industry, may try to forfeit their environmental reclamation liabilities and the promises they made to workers, as well. So, let's be clear. This problem is not inevitable. It is not that these companies simply cannot afford to pay for reclamation, it is that they are choosing not to.

Through bankruptcy, these companies are consolidating mines with little recoverable coal to smaller companies, many of which may also go bankrupt, in order to avoid the responsibility of

cleanup, responsibility that they have not just to the American people, but to this entire country. Meanwhile, reclamation bonds for cleaning up these mines are consolidated to newer and riskier insurance companies. It is not right, it is not fair, and it is a matter of environmental and economic justice.

And the solution to this unfolding crisis is not to provide false hope that coal will return. We need to face this fight head on, and make sure that we are holding coal companies accountable, that we are taking care of workers and their communities while we still can.

With that, I yield back to the Chair.

Mr. STAUBER. Thank you very much. Normally at this point I allow the Chair and Ranking Member of the Full Committee their opening statements, but I don't see them here. So, we are going to go right into opening statements.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the "talk" button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. And at the end of the 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses to testify before Member questioning.

And before I introduce Ms. Owens, I will say that votes are expected to be called any time. So, we will stop so we can vote, and we will come back as soon as practical and start again.

Our first witness is Ms. Glenda Owens, and she is the Deputy Director for the Office of Surface Mining Reclamation and Enforcement, located right here in Washington, DC.

Ms. Owens, you are now recognized for 5 minutes.

STATEMENT OF GLENDA OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT, WASHINGTON, DC

Ms. OWENS. Good morning, and thank you, Chairman Stauber, Ranking Member Ocasio-Cortez, and other members of the Subcommittee. Thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement.

Through the Surface Mining Control and Reclamation Act of 1977, Congress established OSMRE for two primary purposes: 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 it could before any mining, or to higher or better uses; second, to implement the Abandoned Mine Land program and address the hazards and environmental degradation resulting from two centuries of coal mining activities before the law was passed.

OSMRE's Title V programs provide resources to 23 primacy states to administer their regulatory programs on state and private lands. These programs protect the public and the environment from the adverse effects of current mining, and support the reclamation

of impacted lands after active mining operations have concluded. OSMRE provides oversight of state regulatory programs, and directly implements SMCRA on Indian lands and in states that do not have primacy.

The Title IV programs provide grants to states and tribes to conduct reclamation on sites mined before the enactment of SMCRA. OSMRE evaluates state and tribal AML programs and ensures reclamation of mining-related hazards while promoting partnerships to address water quality issues. OSMRE also administers the Federal reclamation program, including watershed cooperative agreements, civil penalty projects, and emergency projects.

Since the establishment of the Abandoned Mine Land Economic Revitalization Program, Congress is authorized through annual appropriations $912.5 million in total AMLER funding, with the purpose of reclaiming abandoned mine lands in conjunction with economic and community development opportunities. The AMLER program has provided funding to the six eligible Appalachian states, as well as the Crow, the Hopi, and the Navajo Nation.

OSMRE verifies and assists with project eligibility determinations on the submitted AMLER grant applications, and since Fiscal Year 2016 has received over 290 project applications. Of those project applications, 284 have received preliminary approval, nearly 180 have received authorizations to proceed, and almost 70 are complete.

The Bipartisan Infrastructure Law (BIL) provided a once-in-a-generation investment in revitalizing the economy and environment of America's coalfield communities. In addition to extending the AML fee collection authority under SMCRA, the Infrastructure Law authorized an appropriated $11.293 billion for deposit into the Abandoned Mine Reclamation Fund, with approximately $10.8 billion to be distributed to eligible states and tribes on an equal annual basis, approximately $725 million a year over a 15-year period to help restore impacted coalfield communities.

So, far, OSMRE has provided $721 million in Fiscal Year 2022 BIL grant funding to the 22 eligible states and the Navajo Nation, and awarded more than $21 million in Fiscal Year 2023 grants to 5 states, with 7 additional state grant applications currently pending.

OSMRE is ensuring that current coal mining is conducted in a manner that protects the public and the environment, and that formerly mined lands are reclaimed to productive, safe, and beneficial uses. OSMRE will continue to work closely in partnership with our state and tribal partners and stakeholders to achieve these goals.

Thank you again for the opportunity to provide this testimony and to appear before you today.

[The prepared statement of Ms. Owens follows:]

PREPARED STATEMENT OF GLENDA H. OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, U.S. DEPARTMENT OF THE INTERIOR

Introduction and Background

Chairman Stauber, Ranking Member Ocasio-Cortez, and other Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSMRE).

Through the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (Public Law No. 95-87), Congress established OSMRE for two primary purposes:

> **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 it could before 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 before the law was passed in 1977.

Since SMCRA's enactment 46 years ago, OSMRE has accomplished the following:

- Closed more than 47,000 abandoned underground mine shafts and openings;
- Eliminated more than 1,050 miles of dangerous highwalls;
- Eliminated more than 131,000 acres of dangerous spoils and embankments;
- Restored more than 700,000 acres of streams and land; and
- Replaced infrastructure for more than 58,000 polluted water supplies.

Environmental Protection, Regulating Active Coal Mining (Title V)

OSMRE's Environmental Protection program provides resources to 23 primacy states to administer their regulatory programs on state and private lands, and where there is an OSMRE-State cooperative agreement, on Federal lands as well. These programs protect the public and the environment from the adverse effects of current mining and support the reclamation of impacted land after active mining operations conclude. OSMRE provides oversight of State regulatory programs and directly implements SMCRA on Indian lands and in states that do not have primacy—known as Federal Program states—and ensures that adequate actions are taken to reclaim mined areas as expeditiously as possible.

Environmental Restoration, Abandoned Mine Land (AML) Fee-Based Grants (Title IV)

The Environmental Restoration program provides grants to states and Tribes to conduct reclamation on sites mined before the enactment of SMCRA in 1977. OSMRE evaluates state and Tribal AML programs to ensure mining-related hazards are reclaimed, while promoting partnerships to address water quality issues from pre-Act sites. OSMRE also administers the Federal Reclamation Program, including watershed cooperative agreements, civil penalty projects, and emergency projects.

Coal mine permittees pay a fee to the AML Reclamation Fund (AML Fund) based on the tonnage of coal produced. As of September 30, 2022, approximately $12.01 billion in industry AML fees have been collected, including interest earned. This does not include funding from the Abandoned Mine Land Economic Revitalization (AMLER) Program or the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), which is described in further detail below.

Abandoned Mine Land Economic Revitalization (AMLER) Program

Since the establishment of the Abandoned Mine Land Economic Revitalization (AMLER) Program—initially the Abandoned Mine Land Economic Development Pilot—Congress has authorized through annual appropriations $912.5 million in AMLER funding, with the purpose of reclaiming abandoned mine lands in conjunction with economic and community development opportunities. The AMLER Program has made funding available to six Appalachian States: Kentucky, Pennsylvania, West Virginia, Alabama, Ohio, and Virginia; and three Tribes: the Crow, the Hopi, and the Navajo Nation.

AMLER grants support local investment opportunities in coalfield economies by creating recreational and tourism opportunities, enhancing infrastructure, and by providing jobs and associated training and skills. AMLER also advances the goals of the Justice40 Initiative. OSMRE verifies and assists with project eligibility determinations on AMLER grant applications submitted by these states and Tribes.

OSMRE has received over 290 AMLER project applications since the start of the program in FY 2016. Of those project applications, 284 have received preliminary approval, nearly 180 have received authorizations to proceed, and nearly 70 have been completed.

OSMRE currently maintains an external-facing AMLER project tracking spreadsheet on its website to inform the public and provide transparency on status of current projects. The spreadsheet provides a snapshot of each project and its review and approval status. We are currently developing an improved tracking system to provide more detailed and timely information on projects as they progress through the approval cycle. Tracking information and other pertinent information and reports on the AMLER program are currently available at www.osmre.gov/amler.

Bipartisan Infrastructure Law (BIL)

The BIL (Public Law No. 117-58) provided a once-in-a-generation investment in revitalizing the economy and environment of America's coalfield communities. In addition to extending the AML fee collection authority under SMCRA, the Infrastructure Law authorized and appropriated $11.293 billion for deposit into the Abandoned Mine Reclamation Fund, with approximately $10.873 billion to be distributed to eligible states and Tribes on an equal annual basis—approximately $725 million a year—over a 15-year period to help restore impacted coalfield communities and provide benefits for current and future generations.

OSMRE appreciates Congress' acknowledgement of the tremendous environmental and economic value of the AML program and effectively implementing this historic investment and delivering meaningful results is a top priority for OSMRE. These funds will improve and significantly increase OSMRE's efforts to support states, Tribal nations, stakeholders, and communities. The BIL expands investment in the AML program, creates an unprecedented opportunity to reclaim abandoned mine features at a scale not otherwise achievable, and is creating good-paying jobs and spurring economic development in coalfield communities.

So far, OSMRE has provided $721 million in FY 2022 BIL grant funding to the 22 eligible states and the Navajo Nation, and awarded more than $21 million in FY 2023 grants to five States (Alaska, Arkansas, Colorado, Iowa, and New Mexico), with seven additional state grant applications currently pending (Illinois, Kansas, Kentucky, Maryland, Missouri, Pennsylvania, and Virginia).

Closing

OSMRE is ensuring that current coal mining is conducted in a manner that protects the public and environment, and that formerly mined lands are reclaimed to productive, safe, and beneficial uses, and that impacted waters are remediated. OSMRE will continue to work closely in partnership with states and Tribes, local watershed groups, citizens, and other stakeholders to achieve these goals and to advance economic revitalization opportunities in coal communities.

Thank you for the opportunity to provide this testimony and to appear before you today.

QUESTIONS SUBMITTED FOR THE RECORD TO MS. GLENDA OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)

Ms. Owens did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative 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.

1a) 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?

1b) 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?

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.

2a) Do you believe a fair and timely bond release process supports the ability of coal operators to keep reclamation activities current?

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

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?

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?

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?

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.

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?

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.

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.

10a) Why does OSMRE need to conduct a third, separate NEPA analysis during its mine plan approval process?

10b) If a third NEPA review is truly required, why can't OSMRE rely on the NEPA analysis conducted previously by BLM?

10c) How is the requirement for three separate NEPA reviews of the same prospective mining impacts consistent with "one federal decision" principles?

Questions Submitted by Representative 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.

Questions Submitted by Representative 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?

Questions Submitted by Representative 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?

Mr. STAUBER. Thanks for your testimony, Ms. Owens.

Our next witness is Mr. Benjamin McCament. He is Chief for the Division of Mineral Resources Management, Ohio Department of Natural Resources, located in Columbus, Ohio.

Mr. McCament, you are now recognized for 5 minutes.

STATEMENT OF BENJAMIN MCCAMENT, CHIEF, DIVISION OF MINERAL RESOURCES MANAGEMENT, OHIO DEPARTMENT OF NATURAL RESOURCES, COLUMBUS, OHIO

Mr. MCCAMENT. Good morning, Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the Subcommittee. I am honored to appear before you today.

My name is Bennie McCament, and I serve as the Chief of the Ohio Department of Natural Resources, Division of Mineral Resources Management. My division includes both Ohio's Abandoned Mine Lands program and the coal regulatory program under the Surface Mining Control and Reclamation Act. I am also the immediate past President of the National Association of Abandoned Mine Land Programs.

The state of Ohio appreciates Congress' continuing support for the state SMCRA programs, especially the investment in the AML program. My testimony today will highlight the successes of Ohio's SMCRA programs, as well as the challenges that we face.

The funding Congress provided via the IIJA has enhanced coal AML work in Ohio. In addition, the STREAM Act, which Governor DeWine supported, was a very helpful clarification to the IIJA, ensuring that we can focus adequate funding and attention on restoring water resources that were impaired by historic coal mining.

Ohio has operated the SMCRA program successfully for over 40 years, but the nearly $700 million over 15 years we will receive via the IIJA is a four- to five-fold increase in historic funding levels. This comes with much responsibility to ensure the funding is used for eliminating as many safety and environmental hazards as efficiently as possible, both for states and for the Office of Surface Mining Reclamation and Enforcement.

I would now like to highlight some challenges caused by the new administrative processes and decisions at OSMRE that could be problematic.

Regarding the Abandoned Mine Land program, OSMRE has determined that all mandatory annual grants must be applied for, tracked, and reported on separately. States have a long history of having adequate financial controls in place, and have asked OSMRE to combine and simplify IIJA and fee-based AML grants at a minimum, allowing states to spend less time on administrative tracking and reporting for multiple grants that cover essentially the same activities.

OSMRE is also requiring an update of approved reclamation plans. This update should be a lower priority than ramping up reclamation work, especially considering Ohio has a reclamation plan update that has been pending for over 5 years.

Lastly, the continued funding support for the Abandoned Mine Land Economic Revitalization Program, AMLER, is greatly appreciated, and the outcomes of creating new job opportunities through this program are needed in Ohio.

Even with Ohio's successes for this program, it could also be streamlined by removing the preliminary vetting step for projects which creates unnecessary delays at times, and by providing permanent program guidelines for states and for our grant recipients.

Regarding the coal regulatory program, SMCRA is founded on the state primacy model, where states are given exclusive regulatory authority over the environmental impacts of coal mining in their jurisdiction. Maintaining the state's ability to do their job under SMCRA is critical to the success of coal mining regulation.

Currently, there are several areas of concern with SMCRA: one is that OSMRE has two pending rulemakings that could be problematic; and two, OSMRE has a significant backlog of state program amendments.

Regarding the rulemakings, a few years ago OSMRE updated the 10-day notice rule, which created greater cooperation between OSMRE and the states on responding to and investigating citizen complaints. This rule has worked well for us. OSMRE's current proposed change to the 10-day notice rule is a reversal of that functioning rule change. The new proposed rule reverses that cooperation, and creates uncertainty and possibly Federal overreach.

OSMRE has also notified states that it plans to conduct rulemaking regarding dam safety. The Mine Safety Health Administration currently regulates dams on mining sites that are hazardous. In Ohio, the Department of Natural Resources manages a dam safety program at the state level for all dams after a mining permit is released. Therefore, the additional regulation proposed could be duplicate.

Plan amendments. We appreciate that OSMRE is currently prioritizing and ramping up efforts to streamline the review of state program amendments. We strongly encourage OSMRE to utilize its pending resources to do that, and we need approval in order to change the state laws and rules to be in compliance.

Mr. Chairman, thank you again for your opportunity to testify, and I look forward to answering the questions from the Committee.

[The prepared statement of Mr. McCament follows:]

PREPARED STATEMENT OF BENNY MCCAMENT, CHIEF, DIVISION OF MINERAL RESOURCES MANAGEMENT, OHIO DEPARTMENT OF NATURAL RESOURCES

Good morning, Chairman Stauber, Ranking Member Ocasio-Cortez and members of the committee. I am honored to appear before you today.

My name is Benny McCament and I serve as the Chief of Ohio Department of Natural Resource's Division of Mineral Resources Management. My division includes both Ohio's abandoned mine lands (AML) program and the coal regulatory program under the Surface Mining Control and Reclamation Act (SMCRA). I am also the immediate past President of the National Association of Abandoned Mine Land Programs, which represents 27 states and tribes.

The state of Ohio appreciates Congress' continuing support for state SMCRA programs, especially the investment in the AML program. My statement today will highlight the successes of Ohio's SMCRA programs as well as challenges we face.

The funding Congress provided via the IIJA has enhanced coal AML work in Ohio. In addition, the STREAM Act, which Governor DeWine supported, was a very helpful clarification to the IIJA—ensuring that we can focus adequate funding and attention on restoring water resources impaired by historic coal mining in our state.

Ohio has operated the SMCRA program successfully for over 40 years, but the nearly $700 million over 15 years we will receive via IIJA is a four to five-fold increase in historical funding levels. This comes with much responsibility to ensure the funding is used for eliminating as many safety and environmental hazards as efficiently as possible, both for states and the Office of Surface Mining and Reclamation Enforcement. (OSMRE).

I would now like to highlight some challenges caused by new administrative processes and decisions at OSMRE that could be problematic.

Abandoned Mine Lands

OSMRE has determined that all mandatory annual AML grants must be applied for, tracked, and reported on separately. States have a long history of having adequate financial controls in place and have asked OSMRE to combine and simplify IIJA and fee-based AML grants, allowing states to spend less time on administrative tracking and reporting for multiple grants that cover essentially the same activities. OSMRE is also requiring an update of approved reclamation plans. This update should be a lower priority than ramping up reclamation work, especially considering Ohio has a reclamation plan update that has been pending at OSMRE for over 5 years. Lastly, the continued funding support for the Abandoned Mine Lands Economic Revitalization (AMLER) Program is greatly appreciated and the outcomes of creating new job opportunities through this program are needed in Ohio. Even with Ohio's successes, this program could also be streamlined by removing the preliminary vetting step for projects which creates unnecessary delays. Providing permanent program guidelines for states and our grant recipients would be more effective.

Coal Regulatory Program

SMCRA is founded on the state primacy model where states are given exclusive regulatory authority over the environmental impacts of coal mining in their jurisdiction. Maintaining the state's ability to do their job under SMCRA is critical to the success of coal mining regulation.

Currently, there are several areas of concern with SMCRA: (1) OSMRE has two pending rulemakings that are problematic; and (2) OSMRE has a significant backlog of state program amendments.

1. Rulemakings:
    a. A few years ago, OSMRE updated the Ten Day Notice rule which created greater cooperation between OSMRE and states on responding to and investigating citizen complaints—this rule has worked well. OSMRE's current proposed change to the Ten Day Notice rule is a reversal of the functioning rule change. The new proposed rule reverses cooperation and creates uncertainty and federal overreach.

b. OSMRE has also notified states that it plans to conduct rulemaking regarding Dam Safety. The Mine Safety Health Administration currently regulates dams on mining sites. In Ohio, the Department of Natural Resources manages a dam safety program for all dams after a mining permit is released. The additional regulation proposed by OSMRE would be duplicative.

2. Plan Amendments: We appreciate that OSMRE is currently prioritizing and ramping up efforts to streamline the review of state program amendments. We strongly encourage OSMRE to utilize its resources regarding this effort. For example, Ohio has six pending program amendments, with at least one that dates to 2015, that need approval in order to change state laws/rules to be in compliance with federal requirements.

In conclusion, communication and collaboration between OSMRE and its state and tribal partners is critical to effectively implement SMCRA programs. Citizens in coal regions are counting on all of us to solve these problems quickly and to reclaim mining sites and create jobs at the same time.

Mr. Chairman, thank you again for the opportunity to testify and I look forward to answering questions from the committee.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. BENJAMIN MCCAMENT, CHIEF, DIVISION OF MINERAL RESOURCES MANAGEMENT, OHIO DEPARTMENT OF NATURAL RESOURCES

Questions Submitted by Representative Ocasio-Cortez

Question 1. Congress made its intention clear in the Infrastructure Investments and Jobs Act that the abandoned coal mine land reclamation funding should create good paying jobs for displaced coal workers and incentivize union labor. (30 USC 1231a(f): "priority may also be given to reclamation projects described in subsection b(1) that provide employment for current and former employees of the coal industry;" 30 USC 1231a(b)(3): "In applying for grants under paragraph (1), States and Indian Tribes may aggregate bids into larger statewide or regional contracts;" and 42 USC 18851: "all laborers and mechanics employed [. . .] on a project assisted in whole or in part by funding made available under this division [. . .] shall be paid wages at rates not less than those prevailing on similar projects in the locality".) How are you implementing the employment priorities included in the law, and are you in touch with the United Mine Workers of America and the AFL-CIO on how best to do so?

Answer. The Ohio AML program is required to operate under current state procurement laws and procedures and establishing new employment priorities for the AML program would require legislative changes to state law. The Ohio Revised Code provides that labor requirements are not to be imposed on contractors and subcontractors on public improvement contracts. Specifically, it provides that a public authority on a construction project for a public improvement cannot require a contractor or subcontractor to enter into agreements with a labor organization, require contractors to become members of a labor organization, or pay dues to a labor organization.

Currently no changes to this procurement code are in process in the Ohio legislature. However as provided for in the Ohio Revised Code, the Chief of the Division of Mineral Resources is contracting with coal operators directly without advertising for bids to perform AML reclamation that is adjacent to an active permit. In Ohio, many of the remaining coal surface mining operations are in areas with extensive pre-law mining. Utilizing this provision in state law helps meet the intended goal of the IIJA of providing employment to current and former coal industry employees and businesses.

Ohio is implementing federal prevailing wage for all AML projects. This is being done for consistency across AML projects, whether federal or state funded, to ensure fair and consistent wage rates. Based off the recent increase in competitive bids for AML projects we believe the inclusion of federal prevailing wage rates has led to heighted interest by contractors—including contractors who utilize unionized labor. These wage rates are critical going forward to have a ready and available workforce to implement AML projects in Ohio.

Several meetings and communication have taken place about AML project opportunities and program requirements with stakeholders, including the AFL-CIO,

United Mine Workers of America, NGO's, and other contracting and labor organizations operating in the state. A legacy pollution roundtable, led by the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Ohio Department of Natural Resources Divisions of Mineral Resources Management and Oil and Gas Resources Management was held in Columbus, Ohio in the spring of 2023 to discuss AML and Orphan Well programs and opportunities in the state. This meeting included the AFL-CIO, UMWA, Laborers International Union NA, NGO's, and other state agencies. A follow up site meeting, with many of the same organizations, was held in November 2023 at a training facility in Hocking County, Ohio. A coalition of NGO's and labor organizations provided labor recommendations to ODNR for both the AML and Orphan Well programs and those are being reviewed.

Mr. STAUBER. Thank you, Mr. McCament, for your testimony.

Our next witness is Mr. Dustin Morin. He is the Director of the Mining and Reclamation Division of the Alabama Department of Labor, located in Montgomery, Alabama.

Mr. Morin, you are now recognized for 5 minutes.

STATEMENT OF DUSTIN MORIN, DIRECTOR, MINING AND RECLAMATION DIVISION, ALABAMA DEPARTMENT OF LABOR, MONTGOMERY, ALABAMA

Mr. MORIN. Thank you. Good morning, Chairman Stauber and Ranking Member Ocasio-Cortez. My name is Dustin Morin, and I am honored to be here as the Director of the Mining and Reclamation Division of the Alabama Department of Labor and as the current President of the National Association of Abandoned Mine Land Programs.

The importance of abandoned mine reclamation cannot be overstated. While the AML programs have achieved tremendous success in our 46-year history, the mantra of the programs continues to be, "Our work is not done." With the passage of the Infrastructure Investment and Jobs Act, Congress clearly acknowledged this reality, and greatly increased the scope and scale of what AML programs can continue to accomplish for our communities.

The $11.3 billion provided by the IIJA, combined with the AML Economic Revitalization Program, or AMLER, marks a transformative era for AML programs across the country. However, as we embrace this opportunity, challenges in implementation loom large.

The Office of Surface Mining Reclamation and Enforcement, or OSMRE, has added numerous administrative complexities to IIJA and AMLER funding that hinder its efficient utilization. As the AML program grows with new funding, state staffing capacity is strained, and there is no time to waste on unnecessary administrative tasks.

Distribution of additional funding to a well-established program should have been simple, fast, and efficient. It wasn't. Instead, OSMRE empowered itself to reinvent the AML program. And while its intentions may be good, the result has not been an overall improvement. The states fear that the new burdens imposed by OSMRE will have a compounding effect on program implementation with each subsequent year, unless OSMRE changes tact.

OSMRE's initial rollout of the IIJA AML funding took more than a year and involved minimal state program input. State program

managers have practical experience and a unique perspective into accomplishing AML work. By not meaningfully collaborating with state programs, the decision makers at OSMRE, who have never run an AML program themselves, are making implementation policies without consulting those of us who have.

Had states been better consulted, we could have avoided many of the problems we are facing. For example, OSMRE's requirement of separate grant applications for IIJA and AML fee grants essentially doubles the administrative efforts required, and it is not necessary. Their insistence on a comprehensive review of every state's legal authority to operate an AML program, simultaneous with our efforts to ramp up to utilize this new funding, is very ill timed.

OSMRE is increasingly scrutinizing state decision making well beyond its proper oversight role, and attempting to insert its own priorities and how states manage their programs. This is a crucial moment. States are striving to maximize reclamation results with temporarily limited staff capacity. To successfully implement the new funding, increased efficiency is vital. But it does not appear that OSMRE is recognizing this.

The AMLER program faces similar difficulties. Through AMLER, states collaborate with communities and local economic development experts to develop projects geared towards economic development on reclaimed sites.

OSMRE requires that it have the chance to vet each AMLER project during development. Again, its intentions are good, but it does not have the economic expertise to vet projects well, certainly not better than the states and their project partners. And the result of OSMRE vetting has been consistent confusion and delay.

For both IIJA and AMLER, OSMRE's interference with sound processes and state decision making is not resulting in more impactful AML projects. It is actually reducing the beneficial impact of the AML program by hindering and delaying the completion of our work.

Instead of reinventing the AML program and second guessing the states, OSMRE should be focused on giving the states the support we need. For example, expanding the national training program. We have repeatedly pleaded with OSMRE to double the capacity of the instructor cadre within the East and West training team, and to explore creative new ways to expand the capability to provide training to new employees for states, tribes, and OSMRE itself. Thus far, they have been slow to heed this call.

I urge Congress to consider directing OSMRE to adjust its implementation plans and underlying priorities, and to refocus on supporting the states by streamlining administration of the programs so that less time and money can be spent on administration and more on reclamation, as intended. Our shared success depends on it, and together we can accomplish the mission we have been entrusted with.

Thank you for your time, and I look forward to answering any questions or further discussion on this matter.

[The prepared statement of Mr. Morin follows:]

PREPARED STATEMENT OF DUSTIN MORIN, DIRECTOR, MINING AND RECLAMATION DIVISION, ALABAMA DEPARTMENT OF LABOR

My name is Dustin Morin, and I am Director of the Mining and Reclamation Division within Alabama's Department of Labor, which houses Alabama's Abandoned Mine Lands (AML) Program under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). I am also the current President of the National Association of Abandoned Mine Lands Programs (NAAMLP), which represents all 27 states and tribes that implement Title IV AML programs.

I appreciate the opportunity to speak to the Subcommittee about the AML program. The state and tribal AML programs are very thankful for Congress' continued support. As Congress has clearly recognized, the AML program is a key part of efforts to put coal communities on solid footing, especially those that are impacted by the energy transition. Through this program, states and tribes are empowered with funding and authority to repair damage left over from historic coal mining. We are making coal communities a safer place to live by closing mine portals, removing dangerous cliffs, and stabilizing subsided property; we are restoring their environment by planting vegetation and eliminating pollution, bringing streams back to life and providing safe drinking water; and as is increasingly being recognized, we are invigorating their economies by making them better places to live, to visit, and to grow a business, helping to prepare land for future development, and providing well-paying construction jobs.

The Infrastructure Investment and Jobs Act (IIJA) greatly increased the scale of what the AML programs can accomplish in all these respects. The $11.3 billion in new funding, along with reauthorization of the AML fee, will allow us to complete the vast majority of remaining coal AML work throughout the country over the next 15+ years. The improved ability to work on environmental hazards through the IIJA funding and STREAM Act will allow us to expand our focus on restoring water resources, one of the most impactful parts of the program. The IIJAs focus on providing good jobs to citizens in legacy coal communities is helping to ensure AML contracting is done in a manner that is most beneficial.

I am confident that the AML programs will continue to deliver the benefits that Congress intends, both through the IIJA-funded coal AML program and the Abandoned Mine Lands Economic Revitalization Program (AMLER). However, there are a number of implementation challenges facing these programs, which I believe deserve Congress' attention. The Office of Surface Mining Reclamation and Enforcement's (OSMRE) implementation of the IIJA funding and AMLER program has been slow and cumbersome and has done more to complicate and delay than to enhance the AML program's ability to fulfill its goals. To ensure the AML program has the greatest possible impact, it is very important that the priorities guiding its implementation be properly ordered and the foundations of its success be maintained. I ask Congress to direct OSMRE to streamline administration of the program, ensure states have access to the resources they need, and most importantly, collaborate meaningfully with the states and tribes on implementation plans. The states have been successfully implementing AML programs for over 45 years and have historically reliable processes for doing so. Changing the recipe for success at a time when we face our greatest challenge hinders our ability to accomplish the important work of AML reclamation.

Streamlining Administration of the Program

The IIJA greatly amplified the annual funding devoted to the state and tribal coal AML programs. Alabama has historically received between $3 and $5 million in annual AML funding and is now receiving roughly $34 million. This is an exciting new era for the AML programs but brings with it the unavoidable challenge of substantially and quickly increasing the staff capacity of the programs to utilize the new funding. Prior to the passage of the IIJA many AML programs across the country were preparing for the expiration of the AML fee-based grant and were therefore slowly shrinking. With the influx of the new funding provided by the IIJA, many programs have had to switch gears and re-staff to capacity to handle the funding increase. The AML programs will be hiring and training hundreds of new engineers, environmental scientists, NEPA specialists, inspectors, and grants management and administrative personnel. Alabama plans to hire between 25–30 new staff. The AML programs must also prepare plans and gain approvals for an increased number of annual projects, which each generally takes 3–4 years from inception to completion. It will therefore take several years before the AML programs have reached the full new potential made possible by the IIJA, but the ramp-up process is well underway, and AML projects continue to be conducted based on existing plans in the meantime.

Given the strained capacity the AML programs are facing, OSMRE's first priority for IIJA implementation should be helping the AML programs put their increased funding into effect as quickly and efficiently as possible, minimizing the time spent on administrative tasks. Unfortunately, OSMRE's approach has done the opposite. It has created a significant number of new administrative processes and tasks, introduced confusion into existing ones, and generally resulted in delays. The roll-out for the first year of IIJA AML funding took more than a year while OSMRE deliberated over its initial plans with minimal state involvement. The AML program has been operating successfully for over 45 years, so implementation of the IIJA funding should have been a relatively simple matter, utilizing reliably successful processes. Instead, OSMRE has essentially taken upon itself to re-invent the AML program, and while its intentions are good, the result has not been an overall improvement. The states fear that the new burdens imposed by OSMRE will have a compounding burdensome effect on effective program implementation with each subsequent year of IIJA funding, unless OSMRE changes tact.

One of OSMRE's goals is to gather information to track and report on progress with AML work. The most unfortunate example is that OSMRE is requiring IIJA grants to be applied for separately from AML fee grants. Having two separate grant applications effectively doubles (or more) the amount of administrative work states and tribes must do to receive their funding and is simply not necessary. The funding is for the same programs and same purposes with relatively minor differences in how the funding can be spent, and states and tribes can easily track how they are spending their IIJA funding and AML fee funding separately through the same kinds of accounting measures we have been using for decades. The burden is further compounded for the states and tribes also receiving AMLER funding.

Similarly, OSMRE is requiring a variety of new kinds of information to be tracked and reported so that a better "story" can be told about the AML programs' accomplishments. Each new reporting requirement and performance measure seems innocuous on its own, but added together, they represent a significant amount of new administrative work, which means less time and money being directed to actually achieving the accomplishments OSMRE intends to report. Meanwhile, there is already a substantial amount of information available to track AML accomplishments through state's and tribe's annual reports and through e-AMLIS, both of which list every project completed and what the project accomplished.

Another of OSMRE's goals is to accentuate the positive social impacts of AML work and ensure that public input is strongly considered. Again, well-intentioned goals, but misguided in their application. OSMRE is scrutinizing the states' plans for projects and "encouraging" the use of a number of additional priorities for their selection and design. This has proven problematic for a number of reasons. For one, states and tribes are bound by SMCRA to focus on addressing safety, health, and environmental hazards when selecting and designing projects. This system works well, including for creating social benefits, because those benefits flow directly from eliminating safety, health, and environmental hazards. To the extent there is room for including other priorities in selecting AML projects, states and tribes are in much better position to judge how to balance those priorities than OSMRE, which is a fundamental reason for the state/tribal primacy approach imbued in SMCRA. Furthermore, AML project selection is already driven largely by public input. States regularly receive calls from local landowners and members of the public bringing their attention to pressing issues and recommending that certain projects be done, which is one of the primary bases for project selections. OSMRE's scrutiny of states' and tribes' decisions, meanwhile, tends to delay and confuse the process. State's grant applications are routinely being sent back with requests from OSMRE for more information and with encouragements to do things differently. The IIJA Guidance Document is updated every year and uses vague terms, making it difficult for states and tribes to gain a solid understanding of OSMRE's expectations. These practices are not resulting in more impactful AML projects; they actually reduce the beneficial impact of the AML program by delaying AML work.

As a final example of misguided implementation, OSMRE is requiring every state and tribal AML program to conduct a comprehensive review of its legal authority to operate an AML program. OSMRE insists that this must be done, seemingly out of a preference for process and desire for an additional opportunity to "encourage" states and tribes to make changes to their programs. The states and tribes feel strongly that this process is not immediately, if at all, necessary and a very poor use of limited AML program staff time. States and tribes already have legal authority to conduct their AML programs, Congress has outlined in the law how the IIJA AML program is to operate, and OSMRE continues to have the opportunity to review and authorize every AML project before funding is drawn down to execute it. Meanwhile, there is a pre-existing backlog of roughly 55 proposed state/tribal

reclamation plan revisions and Title V program amendments awaiting OSMRE's approval, some dating as far back as 2009. It is unclear what is at the root of the long-term delays in OSMRE's approval of these program amendments and plan revisions. I believe a Government Accountability Office (GAO) study may be helpful to illuminate and resolve the issue. In the mean time, it is difficult to see how this new state/tribal legal authority review process on which OSMRE has embarked, which would add 27 more proposed state/tribal reclamation plan revisions, can be done efficiently. We have repeatedly asked that this process be postponed for a minimum of two years until the programs have been able to increase their staff capacity, but OSMRE is proceeding with its plan.

The fundamental problem borne out in these examples is that OSMRE has neglected to recognize that the existing processes for administering the AML program work very well and that the primary challenge facing the AML program is efficiently utilizing increased funding with strained staff capacity. I hope that Congress can direct OSMRE to reorient its implementation plans and underlying priorities to focus on streamlining administration of the program so that less time and money can be spent on administration and more on reclamation as it was intended.

Ensuring States Have the Resources They Need

Supporting the state and tribal AML programs with the resources they need to do their jobs is a key part of OSMRE's role in the program. There are two aspects of this that I would like to bring to Congress' attention: the training program and the IIJA-provided inventory funding.

There are two SMCRA training programs managed by OSMRE in cooperation with the states and tribes: the National Technical Training Program (NTTP) and the Technical Innovation and Professional Services (TIPS) Program. NTTP offers courses to OSMRE and state and tribal employees on technical aspects of performing AML reclamation work, while TIPS offers access to and courses on the use of specialized software required for planning and performing reclamation work. Together, these two training programs (referred to collectively hereafter as the "training program"), are a vital organ in the healthy operation of SMCRA, ensuring that knowledge on how to do AML work well is developed and shared throughout the programs.

Current training program offerings are not enough to satisfy the growing demand due to the influx of new OSMRE, state, and tribal program staff. There are several things that need to be done, and quickly. The way training is scheduled needs to be revamped so that the currently available resources are fully utilized. A number of courses need to be provided in separate eastern and western-focused sections so that they can be tailored to the greatly differing geology and ecology across the country. Most fundamentally, the total number of class sections on offer needs to increase significantly, which means that new instructors are needed. SMCRA training program instructors are all volunteers from the states, tribes, and OSMRE who contribute to the training program in addition to their regular role in the AML program. With the substantial increase in required instructors, it is no longer practical to rely entirely on volunteers. There are subject matter experts available, for example recent retirees from state and tribal AML programs and OSMRE, that would be excellent instructors, but cannot afford to participate without compensation. OSMRE has so far not committed to the notion of funding instructor compensation, despite being granted $339 million for implementation of the IIJA-funded coal AML program. In my opinion, part of this funding should be used to expand the training program. The NTTP and TIPS steering committee has been discussing these issues, but I am not confident that current plans will be enough to provide the level of training that is now needed.

Inventorying AML sites is another important function within the AML program. While most AML sites have already been inventoried, the inventory is dynamic and, over time, previously unknown sites are identified and existing site entries in the database need to be updated as costs increase and conditions change. The state and tribal AML programs' primary focus is on reclamation work, but keeping up with inventorying is important too. Recognizing this, Congress provided $25 million in the IIJA specifically to support the state and tribal AML programs' inventorying work. $25 million split across 27 state and tribal AML programs will not result in a significant update to the AML inventory, but it is enough for states and tribes to do additional inventorying or upgrade their inventory systems, and there are some states and tribes that are very much in need of direct support for inventorying.

Unfortunately, OSMRE has decided to distribute only $8 million of the $25 million provided by the IIJA for inventorying to the states and tribes, and only to

the states and tribes that have remaining coal AML work reflected in their current inventory. OSMRE reportedly plans to utilize the rest of the $17M on upgrades to the national AML database known as e-AMLIS (the Electronic Abandoned Mine Land Inventory System). We have been told by OSMRE that the upgrades in part relate to necessary cyber security updates being required of all such federal systems. I do not believe this is how Congress intended for this funding to be used. $8M will not go very far in supporting the states and tribe's inventory efforts, and it seems that OSMRE's plans for the $17M they have decided to use could have been accomplished with other sources of funding, such as OSMRE's regular Title IV budget or the $339 million it received for IIJA implementation.

A second reason that OSMRE's current plan for the IIJA inventory funding is troubling is that they intend to distribute funding only to states and tribes that have remaining, unfunded coal AML work reflected in their current inventory. Inventories are dynamic and need to be updated over time as conditions change, and it is possible that the states and tribes in question in fact have sites that need additional attention. Those states and tribes cannot receive IIJA funding to address such sites without having remaining AML costs already reflected in the AML inventory but cannot update their inventory without funding. These states and tribes should be given the chance to apply for IIJA inventory funding so that they can in turn receive the IIJA funding they need for reclamation.

Collaborating with States on Implementation Plans

At the core of the problems with OSMRE's IIJA implementation plans is a consistent tendency to discount input received from the state and tribal AML programs. OSMRE's collaboration with state and tribal programs is often in word only. Since the inception of AMLER and the subsequent passage of the IIJA, OSMRE has developed evolving annual guidance and implementation plans in a vacuum, with little to no state/tribal input, and then unveiled them to the states and tribes at the eleventh hour with no time for meaningful state/tribal input or revision. This is not collaboration and must improve. The states and tribes are the primary, front-line implementors of the program and possess a unique perspective on what it takes for the programs to be successful. We have consistently given OSMRE extensive input on how best to implement the IIJA funding, beginning before the IIJA was officially passed. More often than not, we have found that our input is not meaningfully reflected in implementation plans. Many of the problems discussed above with slow, unduly complicated implementation processes could have been avoided by heeding our advice.

A roundtable meeting at OSMRE headquarters was held in January of this year in attempt to improve the working relationship between the states/tribes and OSMRE and resolve implementation difficulties. Coming out of that meeting, we established several OSMRE-state/tribe workgroups to make recommendations on particular aspects of IIJA implementation. The roundtable meeting and workgroups led to good results on several aspects of IIJA implementation, and we appreciate OSMRE's collaboration on those issues. It is proof that mutually workable solutions are possible through cooperation. However, we are concerned that focus on use of the workgroups as venues for this kind of cooperative problem-solving is beginning to wane. It is vital that OSMRE stay committed to developing implementation plans in concert with the states and tribes through the workgroups.

AMLER

The AMLER program has been a great success and major benefit to Alabama. So far, Alabama has spent or committed over $56 million to AMLER projects. Examples of Alabama's projects include:

- The Grand River Tech Park—will provide a future site for the relocation for the Southern Museum of Flight and office space for light industrial manufacturing in the community of Leeds, AL.
- The Hillsboro Coke Oven Park—a park and playground adjacent to some historic coke ovens near the City of Helena, AL.
- The Walker County Agricultural Restoration Project—a dangerous highwall was reclaimed, eliminating a safety hazard and allowing for the expansion of an operational cattle farm in Oakman, AL.
- Piper AML project—reclaiming a mile of dangerous highwall along the Cahaba River adding recreational trails and amenities to the USFWS Cahaba National Wildlife Refuge in West Blocton, AL.
- West Blocton Coke Oven Park—adding RV camping and recreational amenities to a historic coke oven area.

- Eagle Cove Marina—adding boat lifts to the marina adjacent to a legacy mine portal in Tuscaloosa County, AL.
- West Blocton theater restoration—restoring a historic old theater for the city to host its annual Cahaba Lily festival and provide a physical office space for the Cahaba National Wildlife Refuge.
- Hillsboro Sports Park—adding baseball fields adjacent to City of Helena, AL.
- North Fork Creek—highwall reclamation and Acid Mine Drainage clean-up in the Hurricane Creek watershed in Brookwood, AL.

However, AMLER's successes have come despite implementation difficulties similar to those discussed above regarding the IIJA program. OSMRE has assumed a major role in managing the AMLER program and unfortunately, is doing more harm than good. In addition to the typical approval process for all AML projects, OSMRE requires that every potential AMLER project be "vetted" with them while the project is in its development stage. Whereas, in the typical approval process, OSMRE's approval is a fairly simply matter of verifying that the proposed reclamation project fits SMCRA's guidelines, in the AMLER vetting process, OSMRE evaluates for themselves whether the project would, in their view, adequately fulfill the economic development goals of AMLER. There are multiple problems with this process.

One problem is that OSMRE's vetting procedure is slow, confusing, and constantly evolving through an annually released guidance document. Proposed projects are vetted sequentially through the OSMRE Field, Regional, and Headquarters Office and often with the Interior Solicitor's Office. Extensive amounts of detailed information and major revisions to the proposal are often requested. This process typically takes at least a month, often several months, and in a few cases, a year or even several years. Meanwhile, communication from OSMRE to the states/tribes and their AMLER project partners is often lacking or non-existent. It is generally difficult to gain clear understanding of where a project is in the process or what issues may be delaying its approval.

OSMRE has been resistant to putting clear guidelines into writing regarding their expectations for AMLER projects so that issues that have caused delays can be avoided in the future. To the extent written guidelines exist, they are hard to rely on because they are updated every year, typically without prior consultation with states/tribes on what changes will be made. The result is that states and tribes spend an inordinate amount of time trying to understand OSMRE's requirements and chase down information on project's vetting status, project partners are increasingly hesitant to participate in the program, and the flow of AMLER funding into the communities that need it is significantly slower than need be.

A related problem with the vetting process is that OSMRE is not well-equipped to evaluate the economic development prospects of proposed AMLER projects. Unlike states/tribes and their local partners, OSMRE does not possess insight into which projects are most likely to result in the greatest economic impact. OSMRE also does not have prior experience overseeing economic development projects since the traditional AML program is focused only on reclamation. That being the case, it is understandable that OSMRE has struggled to develop expertise on, for example, how federal financial and grant management rules for economic development grants apply to AMLER. A pattern has developed of OSMRE discovering that it must apply some previously unascertained aspect of federal rules to AMLER grants and taking years to determine and clarify how to manage the issue. This occurred first with the issue of when AMLER contracts should be managed as "sub-recipient" vs "contractor" arrangements, then again with respect to "program income", and now is occurring with respect to "real property".

Based on the authorizing language for the AMLER program, I do not believe that Congress envisioned OSMRE taking on the role it has in the AMLER program. I believe Congress intended for AMLER projects to be developed by state and tribal AML programs in concert with their state/tribal economic development agencies and local community interests so that project design and selection is driven by locally-informed knowledge of what will have the best impact. The best way to improve implementation of the AMLER program is to return it to that original, state/tribe- and locally-driven vision. The report language Congress has included in recent budgets regarding AMLER, encouraging OSMRE to better collaborate with the states/tribes and produce clearer guidance, is appreciated, but I do not believe they have been or will be enough to resolve the fundamental problems. I recommend that Congress require OSMRE to directly transfer AMLER funding to states and tribes, eliminating the vetting process, as is contemplated in the House of Representative's FY24 Budget bill.

Conclusion—How Congress Can Help

The AML program has been successful for 45 years and will continue to be successful despite the implementation challenges discussed in my statement. I believe Congress can help to improve implementation of the IIJA and AMLER programs by directing OSMRE to re-orient its priorities toward streamlining program administration and respecting state/tribal primacy and expertise, in addition to the specific changes I have recommended, which are summarized below. I believe these changes will reestablish the proper functioning of the AML program, with OSMRE in its vital support role, and implementation driven by the state and tribal AML programs.

- Institute a single, combined grant application for IIJA- and AML fee-sourced AML funding thereby eliminating the unnecessary administrative burden currently imposed on states by OSMRE new program requirements.
- Limit the amount of additional reporting and information gathering required for use of IIJA and AMLER funding and rely on the traditional reporting of reclamation completion data.
- Provide a single, consistent set of guidance for the IIJA and AMLER programs, respectively, rather than changing guidance each year
- Direct GAO to study the long-term delays in OSMRE's approval of state and tribal program amendments and reclamation plan revisions.
- Increase the number of training courses offered, including western-focused sections where appropriate, and compensate qualified training program instructors.
- Provide the full $25 million in IIJA inventory funding to the states and tribes, and include all 27 states and tribes with Title IV AML programs.
- Provide AMLER funding directly to the states and tribes and eliminate the "vetting" process for proposed projects.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. DUSTIN MORIN, DIRECTOR, MINING AND RECLAMATION DIVISION, ALABAMA DEPARTMENT OF LABOR

Questions Submitted by Representative Ocasio-Cortez

Question 1. Congress made its intention clear in the Infrastructure Investments and Jobs Act that the abandoned coal mine land reclamation funding should create good paying jobs for displaced coal workers and incentivize union labor. (30 USC 1231a(f): "priority may also be given to reclamation projects described in subsection b(1) that provide employment for current and former employees of the coal industry;" 30 USC 1231a(b)(3): "In applying for grants under paragraph (1), States and Indian Tribes may aggregate bids into larger statewide or regional contracts;" and 42 USC 18851: "all laborers and mechanics employed [. . .] on a project assisted in whole or in part by funding made available under this division [. . .] shall be paid wages at rates not less than those prevailing on similar projects in the locality".) How are you implementing the employment priorities included in the law, and are you in touch with the United Mine Workers of America and the AFL-CIO on how best to do so?

Answer. The Alabama AML program is implementing the Infrastructure Investment and Jobs Act funding to meet Congress' intentions to the best of our ability. The benefit to the communities and citizens of Alabama is inherent in the work itself by abating the extremely dangerous safety features associated with abandoned mine lands. There are two accepted methods of procurement for AML work that must be adhered to under the Alabama Procurement Law by the authority of the State's Chief Procurement Officer: 1) Request for Bid (RFB), or Invitation to Bid (ITB) for supplies and non-professional services (including AML construction/reclamation work) which awards work to the "lowest responsive and responsible bidder". 2) Request for Proposals (RFP), and/or Request for Qualifications (RFQ) for professional services which awards work to the offeror "whose proposal conforms to the solicitation" and is "the most advantageous to the state taking into consideration price and evaluation factors". Neither mechanism of procurement currently allows for "preference" to be given to displaced coal workers or unionized labor. Despite repeated requests to OSMRE no definition has been provided to the states for who qualifies as "displaced coal worker" which makes this priority difficult to

implement in theory or practice. However, we appreciate the intent. Alabama, like much of the country, is facing significant work-force challenges in the post-COVID era and there are numerous good paying jobs across the state available to individuals' seeking employment. We have an established practice of bid aggregation into single contracts when advantageous to the state to do so. We also require any contractors performing work on behalf of the AML program to meet the requirements of the Davis Bacon Act and provide us with documentation of certified payroll ensuring that prevailing wages or above are paid.

Mr. STAUBER. Thank you, Mr. Morin.

Our next witness is Mr. Peter Morgan. He is the Senior Attorney for the Sierra Club Legislative Office located here in Washington, DC.

Mr. Morgan, you are now recognized for 5 minutes.

STATEMENT OF PETER MORGAN, SENIOR ATTORNEY, SIERRA CLUB LEGISLATIVE OFFICE, WASHINGTON, DC

Mr. MORGAN. Thank you, Chairman Stauber and Ranking Member Ocasio-Cortez, for the opportunity to testify today.

I am a Senior Attorney with the Sierra Club, based in Colorado. For more than 15 years, my work has focused on assisting local communities nationwide, ensuring coal mines minimize their pollution and are fully reclaimed once they stop production.

The fundamental point I would like to convey with my testimony today is that OSMRE is not confronting the reality that we are on track to see a return to the conditions that led Congress to pass the Surface Mining Control and Reclamation Act, SMCRA, in 1977. That is, thousands of mines abandoned with no source of funds to complete reclamation, requiring an expansion or duplication of the taxpayer-funded AML program.

Modern abandoned un-reclaimed mine sites pose a variety of threats to communities in coal-producing states and tribal lands across the country. These sites are sources of air and water pollution, and contain hazards such as exposed highwalls and open mine portals.

Un-reclaimed mines also exacerbate flooding, due to a lack of vegetation and absence of properly maintained drainage controls. Historic flooding in eastern Kentucky in July 2022 most heavily impacted communities living below un-reclaimed strip mines.

Congress designed SMCRA to address abandoned mines in two ways. Title 4 provides funding to clean up the inventory of abandoned mines already in existence in 1977, while Title V seeks to prevent any additional mines from ever becoming abandoned in an un-reclaimed state. It requires operators to post reclamation bonds and mandates that operators complete reclamation concurrent with coal removal. Both elements of Title V are currently failing.

The primary problem is that OSMRE has not adjusted its approach to account for the now permanent reality of decreasing demand for coal. The U.S. Energy Information Administration recently forecast that annual coal production in the United States will drop almost 23 percent in 2024, compared with 2022. EIA predicts 2024 U.S. coal production will be 60 percent below the peak of coal production seen in 2008.

Industry experts attribute the drop in demand for coal to market forces, primarily the cheap cost of methane gas and renewable energy. Because these market forces will persist, coal production will remain low. This decline in demand for coal has already resulted in dozens of mine operator bankruptcies, and more are coming. Nearly 70 coal mine operators filed for bankruptcy between 2012 and 2020. Four of the largest mine operators offloaded almost $2 billion in environmental liabilities through the bankruptcy process between 2012 and 2017.

Given these economic conditions, OSMRE and state mine regulators should be doing everything they can to give effect to SMCRA's core requirements, which are ensuring that bonds are adequate to cover the full cost of reclamation, and requiring operators to minimize the amount of disturbed, un-reclaimed area at each mine site. In fact, we are seeing the opposite: bond amounts are set too low and in forms that virtually guarantee funds will not be available when needed. And regulators are allowing operations to sit idle, neither removing coal nor conducting reclamation. As a result, there are already hundreds of zombie mines across the country that will never return to production, and where the operators lack the funds to complete reclamation.

There is a narrowing window for OSMRE to take action. First, the agency must collect and make public information on mine production and reclamation status for all coal mines in order to identify the full set of these functionally abandoned zombie permits. Next, OSMRE must conduct a stress test for state bond pools and surety bond providers. OSMRE must also work with states to rigorously enforce SMCRA's contemporaneous reclamation requirements, and OSMRE must finalize the 10-day notice rule in order to afford impacted communities their full right to public participation in mine oversight.

Only with rapid and decisive action by OSMRE can we avoid a new generation of dangerous, polluting, economically unproductive, abandoned mine lands. Thank you.

[The prepared statement of Mr. Morgan follows:]

PREPARED STATEMENT OF MR. PETER MORGAN, SENIOR ATTORNEY, SIERRA CLUB

Thank you Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the Committee for the opportunity to testify regarding the Office of Surface Mining Reclamation and Enforcement (OSMRE) and its oversight of abandoned mine lands and active mining programs.

I am a Senior Attorney with the Sierra Club, the nation's oldest and largest grassroots environmental organization. My work focuses on assisting local communities nationwide ensure coal mines minimize their pollution and are fully reclaimed once they stop production. As part of this work, I frequently interact with OSMRE staff at the national and regional level.

I. OSMRE is not confronting the reality that we are on track to see a return to the conditions that led Congress to pass SMCRA in 1977: thousands of mines abandoned with no source of funds to complete reclamation, requiring an expansion or duplication of the taxpayer-funded AML program

Over the 15 years that I've worked on coal mining-related issues, I've seen major transformations in the coal industry: from a boom in permitting at the peak of the coal market in the 2000s, to a period of declining production and increasing environmental violations, to multiple waves of bankruptcies and the present situation where we are seeing increasing mine abandonments and decreasing funds available to cover the costs of reclamation. Unfortunately, across this timespan OSMRE has

not adjusted its approach and continues to operate as if demand for coal is never-ending and new coal mines will continue to be permitted, rather than acknowledge the reality that the industry is in decline, reclamation funding is inadequate, and communities are being forced to bear the burden of living next to disturbed areas that generate pollution and are prone to flooding and erosion. OSMRE's failure to adjust to this reality has created conditions under which, if appropriate action is not immediately taken, thousands of additional unreclaimed permits will be abandoned, the costs to be borne by nearby communities and taxpayers.

A. Market forces have led to a permanent decline in demand for coal that is leading to rapidly decreasing production, shuttered mines, and a high risk of mine abandonments

Every decision relating to the regulation of coal mining must be informed by a clear-eyed understanding that the demand for coal is in dramatic and permanent decline. The decline of the coal industry is well documented and attributable to the comparatively lower price of natural gas and renewable energy. In its recent October Short-Term Energy Outlook, the US Energy Information Administration (EIA) forecast that annual coal production in the U.S. will drop 2.7 percent in 2023 compared with 2022, and that this decline will then dramatically increase in 2024 with an additional 20.0 percent decrease.[1] EIA predicts 2024 U.S. coal production will be 465 MMst. This is about 13.1 percent below the previous low set in 2020 and 60 percent below peak coal production of 1,172 MMst in 2008. Industry-tracking experts attribute the drop in demand for coal to market forces. In a recent interview with the publication S&P Global Commodity Insights, Morningstar Research Services analyst Travis Miller said: "I just don't see a pathway to coal generation being a material part of the generation mix in the next decade and beyond. There is too much growth in renewable energy. Nuclear economics appear to be stable now with some of the tax incentives, and gas is just such a valuable generation fuel source that the US is never going to be replacing gas with coal."[2]

This decline in demand for coal has already resulted in dozens of mine operator bankruptcies, and more are coming. Nearly 70 coal mine operators filed for bankruptcy between 2012 and 2020.[3] Four of the largest mine operators—Patriot Coal, Alpha Natural Resources, Arch Coal, and Peabody Energy—offloaded almost $2 billion in environmental liabilities and more than $3 billion in retiree liabilities through the bankruptcy process between 2012 and 2017.[4] Because coal production and the demand for coal continue to drop, more mine operator bankruptcies are coming. And these are much more likely to be total liquidations resulting in large waves of abandoned permits. Indeed, we're already seeing permits that were transferred out of prior bankruptcies go back through the bankruptcy process as the operators who acquired them on the cheap are themselves forced to liquidate. The prospects for these permits to be reclaimed by industry without cost to taxpayers is extremely low.

B. Congress' intent in passing SMCRA in 1977 is being frustrated by OSMRE's inaction

Congress passed the Surface Mining Control and Reclamation Act (SMCRA) in 1977 to address the problem of mines being abandoned unreclaimed, finding that "there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality."[5] Congress took two fundamental

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[1] U.S. Energy Information Administration, Short-Term Energy Outlook, October 2023. Available at https://www.eia.gov/outlooks/steo/archives/Oct23.pdf

[2] Kuykendall, T. "Monthly US coal production heading for a cliff, starting . . . now," S&P Capital IQ, October 30, 2023. Available at https://www.capitaliq.spglobal.com/apisv3/spg-web platform-core/news/article?KeyProductLinkType=2&id=78096170

[3] Kuykendall, T. "Roster of US coal companies turning to bankruptcy continues to swell." SNL. June 4, 2015. https://www.snl.com/interactiveX/Article.aspx?cdid=A-32872208-12845&FreeAccess =1; Saul, J. and Doherty, K. U.S. Bankruptcy Tracker: Coal's a Canary in the Mine for Energy. Bloomberg. December 8, 2020. https://www.bloomberg.com/news/articles/2020-12-08/u-s-bankruptcytracker-coal-s-a-canary-in-the-mine-for-energy

[4] Macey, J. and Salovaara, J. "Bankruptcy as Bailout: Coal Company Insolvency and the Erosion of Federal Law," Stanford Law Review. April 2019. Available at https:// review.law.stanford.edu/wp-content/uploads/sites/3/2019/04/Macey-Salovaara-71-Stan.-L.-Rev.-879.pdf

[5] 30 U.S.C. § 1201(h).

approaches in SMCRA, providing for clean-up of already abandoned mines, and setting out regulations to prevent any new mines from being abandoned unreclaimed. Title IV of SMCRA created the Abandoned Mine Lands program to provide funding to clean up the existing inventory of unreclaimed sites across the county. In Title V, Congress created a structure of regulations to ensure that no new mines would ever again be abandoned unreclaimed or without the means for regulators to immediately complete reclamation. This regulatory structure for new coal mines is built around two central requirements. First, mine operators must provide bonds or other financial assurances adequate to cover the full costs of any reclamation that may be outstanding should the company go out of business. Second, mine operators must conduct reclamation as they go, so that at any given time the total disturbed area (and therefore the remaining reclamation cost) is as small as possible. SMCRA is currently being implemented in a manner that fails on both fronts.

C. OSMRE and state regulators are failing to require adequate bonding, meaning the money is not there to pay for reclamation of abandoned sites

SMCRA requires that before a mining operation can begin, the permit holder must provide adequate financial assurances. These can take a variety of forms, including third-party surety bonds and participation in state-administered bond pools. As currently implemented, SMCRA bonding fails to deliver on Congress' intent in two ways. First, regulators often underestimate the actual costs of reclamation in a manner that keeps bonding expenses low for operators, but leads to there being inadequate funds to actually pay for reclamation. In 2021, in the bankruptcy liquidation of major coal mine operator Blackjewel LLC, the Kentucky Energy and Environment Cabinet estimated that the cost of reclaiming 33 permits revoked by order of the court would exceed those permits' bond amounts by over $28 million. This came after an earlier report by OSMRE in 2017 found that the bonds forfeited by bankrupt coal companies in Kentucky covered only 52.8 percent of actual reclamation costs.[6] A 2021 West Virginia legislature audit found that individual bonds in the state cover only 10 percent of projected reclamation costs, leaving the state's inadequate Special Reclamation Fund bond pool to cover the entire shortfall.[7] But, as discussed below, those costs would quickly overwhelm and drain that bond pool.

Second, the forms of financial assurances allowed by regulators are not appropriate for the current reality of declining production and increasing abandonments. Surety bonds may seem reliable because they pass the risk on to third-party bond providers. But a small number of sureties have been allowed to dominate the market, meaning they are dramatically over-exposed to a declining industry and have issued bonds far in excess of what they can afford to pay out. This creates a risk of widespread defaults, and also gives those bond providers enormous leverage over regulators. The West Virginia audit found that a single surety bond provider has issued bonds covering approximately two-thirds of bonded reclamation costs in the state, leaving the state extremely vulnerable should that provider default. Five surety companies, including that one, have issued 91 percent of bonding in the state.[8]

State-run bond pools also carry enormous risks. By definition, these bond pools are intended to hold only a fraction of the funds actually needed to cover reclamation costs for all of the permits participating in the pool. How much money is maintained in the pool is determined by an actuarial analysis. But this analysis is inherently backward-looking, being based on historic rates of forfeiture from a time when demand for coal was high. The actuarial analyses, and therefore the amount of funds maintained in the pools, do not account for the coming avalanche of abandoned mines. And even if regulators try to increase the amount of funds in the pools, they are constrained by the fact that the traditional sources of funds—new permits issued and tons of coal mined—are also dwindling. Just as the demand for funds *from* these pools is increasing, the source of funds *into* the pools is shrinking. Bond pools are currently utilized in West Virginia, Kentucky, Virginia, Indiana, and Ohio. A recent actuarial analysis of the Ohio bond pool noted that coal production in the state dropped by more than 50% between 2019 and 2020, and found that the

[6] OSMRE Annual Evaluation Report for Kentucky, 2017. Available at https://perma.cc/8WWU-V2F4

[7] West Virginia Legislative Audit Report, "WV Department of Environmental Protection Division of Mining & Reclamation—Special Reclamation Funds Report," June 7, 2021, at p. 13. Available at https://www.wvlegislature.gov/legisdocs/reports/agency/PA/PA_2021_722.pdf

[8] West Virginia Legislative Audit Report, June 2021.

bankruptcy of any one of the five largest mine operators in the state would wipe out the entire bond pool.[9]

Inadequate bonding also makes it less likely that operators will complete reclamation. SMCRA provides for the release of bonds in phases. The largest portion, approximately 60 percent, is released once backfilling and regrading is complete. The next tranche is released following revegetation. And the smallest portion is released at final reclamation. If bonds are too small, then operators lack an adequate incentive to secure bond release—particularly the final stages.

An example from West Virginia illustrates a number of these problems with reclamation bonding. In early 2020, one of the largest operators of coal mines in West Virginia—ERP Compliant Fuels—was teetering on the verge of bankruptcy. Many of ERP's mines had been acquired through the bankruptcies of other operators, including Patriot Coal, which itself had been spun off from Peabody Energy and Arch Coal. Rather than allow ERP to go into bankruptcy, which would have risked approximately 100 unreclaimed mines becoming the responsibility of the state, the West Virginia Department of Environmental Protection took the extreme step of placing the company into a special receivership. In its court filings seeking creation of that receivership, WVDEP stated that "DEP stands poised at the precipice of having to revoke the Defendant's permits, forfeiting the associated surety bonds, and transferring the responsibility for cleaning up the Defendant's mess to the State's Special Reclamation Fund, potentially bankrupting the Defendant's principal surety and administratively and financially overwhelming the Special Reclamation Fund, the State's principal backstop for all revoked and forfeited mine sites in West Virginia."[10] We're now three-and-a-half years into that "special receivership," many of ERP's mines remain unreclaimed, and it appears clear that the special receiver will not have the funds to complete the reclamation. The 2021 West Virginia audit report indicated that at the time of the report, ERP still held 91 permits, after forfeiting or transferring some permits. Those permits are backed by $83 million in reclamation surety bonds.

However, because bonds in West Virginia typically only cover 10 percent of the actual reclamation liability, the true outstanding cost of reclamation at the remaining ERP mines could be as high as $830 million. As of March 2021, the West Virginia bond pool contained approximately $36 million, with another approximately $150 million in a separate fund for water treatment.[11] The ultimate fate of the ERP permits, and the communities that they continue to impact, remains uncertain, though it is clear that significant costs will ultimately be passed on to the state. In the wake of ERP's failure, West Virginia has not made any substantive changes to its bonding program, nor has OSMRE compelled any such changes.

The federal SMCRA statute also authorizes the use of "self-bonding," which in practice equates to no bonding at all. At the time that they entered bankruptcy, Alpha, Arch, and Peabody each had hundreds of millions of dollars of self-bonded reclamation liabilities. This allowed them to negotiate extremely favorable agreements with regulators, including allowing them to continue operating even though they no longer satisfied SMCRA's reclamation bonding requirements.[12] Fortunately, in the wake of these major bankruptcies, most self-bonds have been replaced. However, five states have allowed existing self-bonds to remain in effect, and an additional 16 states still maintain the option to utilize self-bonding under state law. For example, Virginia allowed the Justice Group to maintain its self-bonds. In return, the Justice Group has flouted reclamation requirements with impunity, aware that the regulator cannot afford to fully enforce the law out of fear of precipitating abandonment of these unbonded sites.

D. OSMRE and state regulators are failing to enforce reclamation requirements, magnifying the reclamation burden when those mines are abandoned

SMCRA's reclamation requirements are being implemented and enforced by OSMRE and state regulators in a manner that makes it likely significant reclamation work will remain outstanding when permits are abandoned.

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[9] Taylor & Mulder, Inc., "Ohio Reclamation Forfeiture Fund Actuarial Study as of December 31, 2022." Available at https://ohiodnr.gov/wps/wcm/connect/gov/8342b87d-3f06-466c-a0e6-5d00185a9c27/May+2023+actuarial+study+of+Reclamation+Forfeiture+Fund.pdf?MOD=AJPERES&CVID=ozU-XML

[10] West Virginia Department of Environmental Protection's Motion for Temporary Restraining Order and Preliminary Injunction, March 26, 2020, at p. 3; and Affidavit of Harold Ward, Acting Director WVDEP, March 26, 2020, at para. 62-64. Available at https://www.sierraclub.org/sites/default/files/2023-11/Motion%20for%20TRO%20and%20Ward%20Affidavit.pdf

[11] West Virginia Legislative Audit Report, June 2021.

[12] Macey, J. "Bankruptcy as Bailout."

Although SMCRA requires "contemporaneous reclamation," in practice OSMRE and state regulators have allowed operators to focus on coal removal at the expense of reclamation. But once all of the coal has been removed, operators have an incentive to move their resources elsewhere. For example, in West Virginia, Brooks Run Mining's Seven Pines mine is a large mountaintop removal strip mine. According to West Virginia inspection reports, the number of disturbed and reclaimed acres at the site have not changed since September 2018. In December 2020, the West Virginia regulator cited the mine for failing to conduct contemporaneous reclamation.[13] Local communities feared that the significant drop in the price of coal at that time meant that the mine would likely be abandoned. The company appeared to have pulled all resources from the site, and even allowed its Clean Water Act discharge permit to lapse. Then, when coal prices temporarily rebounded in 2022, the company resumed mining. According to coal production records from the West Virginia Office of Miners' Health, the mine produced 261,430 tons of coal in 2022, making it the 16th highest producing mine out of the 83 mines with any coal production that year.[14] But the mine still did not conduct any reclamation, despite the influx of revenue and the generation of spoil material. Instead, in April 2023 the West Virginia mine regulator conducted a flyover of the mine site, reporting extensive areas of exposed highwall.[15] The regulator again cited the company in August 2023 for failing to conduct the required reclamation, stating "NOV 41 has been running for more than 2.5 years and permittee has had ample time and has had sufficient excess material to fully backfill and grade the 'Apple Core' area." [16] Now that coal prices have dropped, the history of violations and lack of reclamation at this site make it unlikely that work will be completed by the operator. This example illustrates how, despite the issuance of paper violations by the regulator, the coal mining industry understands itself to have free rein to maximize profit while ultimately passing reclamation costs on to taxpayers and the local community.

Regulators are also allowing mine operators to abuse the process for placing mines into "idle" or "temporary cessation" status, and are failing to effectively enforce requirements that active mines either produce coal or conduct reclamation. In theory, the process for allowing mines to be idled or placed into temporary cessation is supposed to provide for a temporary pause in operations, for example during a short-term drop in coal prices. But this process is regularly abused, including by operations with no intent—or ability—to ever resume production. The result is mines left in a persistently unreclaimed status. The West Virginia audit found twenty-six surface mine sites that have been allowed to remain inactive for more than 10 years, including nine permits that have been inactive for more than 20 years. At the time of the report, 160 permits, bonded for $72 million, were inactive. Out of 100 inactive status applications reviewed, the audit found 171 instances where the applicant failed to meet the requirements for inactive status, yet the mine was allowed to cease operations without reclamation.[17]

In many cases, mine operators don't even bother to seek or obtain formal permission to stop production. As a result, the official permit status maintained by the regulator may not reflect the on-the-ground reality. Preliminary analysis by Appalachian Citizens' Law Center (ACLC) suggests that a large portion of Kentucky's surface coal mines have been idled, but nonetheless are still listed as active. ACLC examined 126 permits that the state has categorized as actively producing coal, but found that nearly 40 percent of them have actually had no coal removal since 2020 and have not been moved into reclamation status. These permits alone cover nearly 12,000 disturbed acres of land.[18]

These paperwork exercises are being used to shield the fact that many mines—maybe even the majority of mines—are being permanently shut down in an unreclaimed condition. Workers are let go, equipment is sold or moved off site,

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[13] West Virginia Department of Environmental Protection, Notice of Violation 41 for permit S201002, Dec. 11, 2020. Available at https://www.sierraclub.org/sites/default/files/2023-11/WVDEP%20S201002%20NOV%2041%2012-11-2020.pdf

[14] West Virginia Office of Miners' Health, CY2022 Annual Report and Directory of Mines. Available at https://minesafety.wv.gov/wp-content/uploads/2023/07/CY-2022-Annual-Report.pdf

[15] West Virginia Department of Environmental Protection aerial inspection photos for the Brooks Run Seven Pines mine, April 27, 2023. Available at https://www.sierraclub.org/sites/default/files/2023-11/Aerial%20photos%20of%20Seven%20Pines%20mine.pdf

[16] West Virginia Department of Environmental Protection, Cessation Order for Notice of Violation 87 for permit S201002, August 14, 2023. Available at https://www.sierraclub.org/sites/default/files/2023-11/WVDEP%20S201002%20CO%20for%20NOV%2087%208-14-2023.pdf

[17] West Virginia Legislative Audit Report, June 2021, at pp. 3-4.

[18] Appalachian Citizens' Law Center, "Functionally Abandoned 'Active' Surface Mine Permits in Kentucky" November 2023. Available at https://drive.google.com/file/d/11pW0HWHaBiQK1x5cfvCHzc2a05Qx-Io5/view.

operators have no intention or expectation of ever resuming operations. These are abandoned mines. But on paper, they continue to be listed as active or just temporarily idled. Regulators turn a blind eye, or actively facilitate this practice, because so long as these mines are not officially abandoned, the regulators don't need to contend with the lack of money to pay for reclamation.

The failure of OSMRE and state regulators to compel operators to complete reclamation, and to accurately track the actual status of operations, has made it difficult for the public to understand the actual state of the coal industry. One problem is that production data is tracked on an independent system that does not align with SMCRA permit numbers, so it can be difficult to tell which mines listed as active are actually producing. In an effort to close this data gap, Members of Congress—including members of this Subcommittee—recently submitted letters to the Government Accountability Office (GAO) requesting a report compiling information on actual coal production and reclamation. Should the GAO agree to conduct this study, full and complete participation by OSMRE and state regulators will be critical.

Even when operators conduct reclamation, OSMRE and other regulators often fail to require compliance with SMCRA's reclamation requirements, or the applicable requirements prove inadequate and inappropriate. OSMRE directly implements SMCRA on certain tribal lands, including on Navajo and Hopi land in Arizona where Peabody Energy operated the Black Mesa and Kayenta mines for 50 years. Black Mesa closed in 2005 and Kayenta in 2019. Peabody's reclamation efforts have been inadequate to restore the land and water impacted by its mining. In particular, Peabody has failed to repair the damaged Navajo Aquifer, the only source of drinking water for the more than 50,000 people living on Black Mesa. Rather than use native vegetation adapted to the arid local environment of this part of the Southwest, Peabody has been allowed to reseed an overwhelming majority of the tens of thousands of disturbed acres with non-native Midwestern grass species that will not be viable over the long-term. Local residents have repeatedly tried to raise these concerns with OSMRE, including asking OSMRE to treat closure of the Kayenta mine as a significant permit revision that would allow for public participation, local input, and a comprehensive all-of-government review of reclamation plans that have not been updated in more than three decades. Instead, OSMRE has allowed Peabody to delay both reclamation and required permit revisions, to the detriment of the community. Although Peabody is one of the largest coal mine operators in the world, it is subject to the same negative economic forces affecting the entire industry. Local residents worry that OSMRE's inaction exposes their communities to the risk that Peabody could ultimately abandon the sites unreclaimed and with major mine-related damage to the region's main aquifer unaddressed.

These issues of inadequate reclamation and the need for public participation are magnified at sites where surety companies have opted to complete reclamation in lieu of paying out the face value of bonds. In a letter sent to OSMRE in December 2021, Sierra Club and 14 other community groups requested that the agency issue a directive clarifying public participation rights regarding surety-led reclamation efforts, including modifications to the approved reclamation plan, and at bond release. To date, OSMRE has provided no substantive response to this request.

E. Community health and safety are at stake if OSMRE continues to fail to act

Our nation has already placed an enormous burden on the communities that live in coal producing regions. These communities have seen their forests slashed, mountains leveled, streams polluted, and air choked with dust, all to subsidize coal-generated power. But at least SMCRA promised that at the end of the day the sites would be cleaned up, maybe even returned to some other productive use. We are now breaking that promise through OSMRE's inaction. Abandoned unreclaimed mine sites pose a variety of threats to nearby communities.

In July 2022, communities in eastern Kentucky experienced unprecedented and devastating flooding. Dozens of people died in the floods and thousands of homes were destroyed or significantly damaged.[19] Local residents ascribe the severity and destructiveness of the flooding to the presence of unreclaimed coal mines on the ridgelines directly above the most impacted communities. Unreclaimed coal mines contribute to extreme flooding and ancillary effects such as landslides due to factors including the absence of vegetation to absorb runoff, the instability of soil, and poorly maintained drainage systems that fail to capture or redirect runoff. In the aftermath of the flooding, local community members filed at least 125 requests for

[19] Elamroussi, A. and Andone, D. "Death toll in Kentucky floods rises to 28 as area braces for more rain," CNN.com, July 31, 2022. Available at https://www.cnn.com/2022/07/31/weather/kentucky-appalachia-flooding-sunday/index.html

inspection with the Kentucky mine regulator, documenting flood-related impacts at local mine sites including slides, slips, subsidence, pond failure and more. In February 2023, the organization Kentuckians For The Commonwealth sent a letter to OSMRE requesting an investigation into "the extent to which the cumulative impact of surface mining, past and ongoing, exacerbated the devastating toll of lives, homes, businesses and property lost during the flood."[20] The letter also requested an investigation into the failure of the Kentucky regulator to properly enforce SMCRA prior to the flooding, noting that "[w]e are gravely concerned that incomplete reclamation of inactive mines and regulatory failure to enforce contemporaneous reclamation of active mines contributed to the devastation of the July 2022 flood." OSMRE has not responded to the community group's letter.

Some abandoned mines include inadequately secured mine portals allowing access to dangerous underground mine works. In 2018, three people were trapped for days in a West Virginia mine after entering the mine in search of copper and other materials to sell for scrap.[21] Local residents frequently access mine sites when hunting, riding ATVs, and engaging in other recreation activities. In Tennessee, OSMRE inspection reports for a mine operated by Kopper Glo have repeatedly noted the presence of open mine portals. A March 2023 report noted that "[t]he fence at the entrance to the face-up area has been cut and the gate is open. Buildings have been removed from the site. Tipple remains in the pit area. Portals are open. There is non-coal waste throughout the permit that needs to be disposed of. The gate was open at time of inspection."[22] Several months later, a June report for the same mine noted "Mine Portals are exposed and there are signs of vandalism at the entries. Fencing and barricades were installed at mine openings when active operations ceased. Access to the site was also restricted with fencing and locked gate. The gate was cut and not replaced. The fencing and barricades at mine openings have been removed or vandalized. There are signs of 3rd party disturbance at the mine openings."[23] Despite these clear signs of abandonment, and the documented presence of dangerous open mine portals, the mine was listed as "active" on these inspection reports. Even more shocking, OSMRE approved a permit renewal for the mine site in April 2023, three-and-a-half years after the renewal application had been filed, and even after the March inspection clearly showed the site to be abandoned.

Unreclaimed surface coal mines often include thousands of feet—sometimes miles—of exposed highwalls. A highwall is the unexcavated face of exposed coal and overburden—essentially an artificial cliff that may be dozens of feet high. Highwalls pose hazards to anyone accessing the site, whether from the risk of falls from the top, or being struck by falling or collapsing materials at the bottom. The Mine Safety and Health Administration has issued a safety alert for highwalls.[24] In addition, highwalls can serve as sources of mining pollution, as water that has seeped through pollutant-bearing materials may be discharged directly to surface streams without passing through soil that can sometimes serve as a filter to remove certain pollutants. Mine operators are supposed to minimize the length of exposed highwall, using newly mined material to reclaim previously mined areas. In practice, operators often prefer to dump this spoil material into valley fills rather than reclaim highwalls.

Abandoned mines also serve as sources of water pollution. Surface coal mines, particularly in Appalachia, dispose of excess mine spoil by dumping it into streams as valley fills. Once in place, the water moving through this material picks up pollutants and carries them downstream. This water may require active treatment for years in order to meet water quality standards. When mines are abandoned, they stop operating treatment systems. Regulators may also seek to avoid the costs of water treatment, particularly if they failed to require adequate bonding. A series of

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[20] Giffin, C. "Did coal mining play a role in 2022 Kentucky flood deaths? Group wants feds to investigate," Louisville Courier Journal, Feb. 13, 2023. Available at https://www.courier-journal.com/story/news/local/2023/02/13/group-wants-federal-investigation-of-coal-mining-role-in-kentucky-flood-deaths/69890515007/

[21] Holcombe, M., "They went into an abandoned mine to steal copper, police say. Then they got trapped," CNN.com, Dec. 13, 2018. Available at https://www.cnn.com/2018/12/12/us/west-virginia-abandoned-mine-trapped/index.html

[22] OSMRE Inspection Report, Permit 3229, March 14, 2023. Available at https://www.sierraclub.org/sites/default/files/2023-11/3229%20Q2%20FY23%20Complete%203.14.2023.pdf

[23] OSMRE Inspection Report, Permit 3229, June 21, 2023. Available at https://www.sierraclub.org/sites/default/files/2023-11/3229%20Q3%20FY23%20Complete%20followup%20FTACO%20openings%20NOV%20liability%206.21.2023.pdf

[24] U.S. Dept. of Labor, Mine Safety and Health Admin., "Highwall—Safety Alert." Available at https://www.msha.gov/highwall-safety-alert

citizen enforcement suits in West Virginia finally compelled the state mine regulator to secure Clean Water Act permits for bond forfeiture reclamation sites.

H. OSMRE must adapt to the new reality that declining coal production has rendered many traditional enforcement tools ineffective

One challenge for OSMRE, which the agency has yet to confront, is that some of the enforcement tools provided in SMCRA presume a widespread ongoing interest on the part of operators in securing new permits and in conducting new coal removal. For example, SMCRA requires that mine operators with unabated violations be placed on an "Applicant/Violator System" list, and prohibits regulators from issuing permits to operators appearing on this list. This program is completely ineffective as a deterrent in the current moment when the majority of operators have no intention to acquire any additional permits.

Another potentially powerful tool provided under SMCRA is the ability of regulators to initiate bond forfeiture at operations that have ceased complying with SMCRA. By requiring financial assurances adequate for the regulator to complete reclamation, SMCRA was supposed to free regulators to utilize bond forfeiture whenever necessary. In practice, OSMRE and state regulators have proven extremely hesitant to actually invoke this power. Because they know that bonding is inadequate, regulators have become reluctant to invoke bond forfeiture. The example of West Virginia's approach to ERP, discussed above, provides one such example of the lengths to which regulators will go to avoid using bond forfeiture. Another example comes from Kentucky, where, as of June 2022—more than a year after conclusion of the Blackjewel and Cambrian bankruptcies—at least 136 permits remained in the name of these and other dissolved entities. However, the Kentucky regulator had started bond forfeiture proceedings for only 37 of those permits. Although the regulator may be hoping that some other operator will come along who wants to resume operations at those sites, 100 permits had no active permit transfer application.

OSMRE has missed multiple opportunities to appear in mine operator bankruptcy proceedings. This absence has allowed funds that should have gone to site reclamation—or even site maintenance—to instead go to hedge funds and other creditors. The lack of participation by OSMRE or other mine regulators also allows unreclaimed mines to be transferred to under-financed operators who lack the means to complete reclamation, or who are prohibited from receiving new permits. During the 2019 Cambrian bankruptcy, neither OSMRE nor any state regulator objected to the sale of permits to three coal companies whose listing on OSMRE's Applicant/ Violator System should have made them ineligible to hold the permits.

II. There is still an opportunity for OSMRE to take needed actions, but only if the agency acknowledges the reality of declining production and the need for a changed approach

It is not too late for OSMRE to act. There is still money in the coal industry that can and must be put towards cleaning up these sites and protecting nearby communities. But first, regulators must acknowledge the reality that the coal mining industry is, and will continue to be, in decline, and consequently that the approaches that worked in 2008 will not work today. This means stopping reliance on bond pools and other financial assurance devices premised on an assumption of overall financial health within the industry. It also means rigorously enforcing contemporaneous reclamation requirements.

Most importantly, OSMRE must use its oversight authority to compile information on which mine sites are actually producing coal, which are actively conducting reclamation, and which have been functionally abandoned and pose the greatest risk of passing significant reclamation costs on to the public. To achieve this, OSMRE should require states to provide permit-specific quarterly data regarding the number of acres at each site that require backfilling and regrading, and that require revegetation. OSMRE should also require states to provide data on the amount of coal produced from each SMCRA permit. Cross-referencing this data will highlight which permits are at the greatest risk of abandonment. OSMRE should make this data publicly available so that regulators and the public may easily understand trends, and risks, in coal production and mine reclamation.

OSMRE must also subject each state bond pool to a rigorous stress test based not on backward-looking forfeiture rates, but on a comparison of the funds currently in the bond pool against actual projected reclamation costs. At a minimum, OSMRE must evaluate the cost of completing reclamation at every mine in the state that hasn't produced coal in more than a year. This will give a more accurate estimate of the future burden on the bond pool. Similarly, OSMRE must evaluate the financial health of surety bond providers, including their total exposure to the coal

mining industry. Sureties who have already provided bonding to coal mine operators far in excess of their cash reserves should be presumed to be at very high risk of defaulting and not being able to pay out bond amounts when called upon.

In the meantime, OSMRE must advise state regulators to stop allowing new permits to participate in bond pools. When you find yourself in a hole, the first thing to do is stop digging. There are still a small number of permits being issued, primarily for operations that mine metallurgical or steel-making coal. These new mines must be required to post full-cost bonds or other financial assurances. Similarly, any time a permit is transferred, regulators must evaluate the adequacy of the bond. Where a permit set to be transferred is currently participating in a bond pool, the transferee must be required to provide a full-cost replacement bond. Where a mine operator seeks to use a third-party surety bond, regulators must look at how many bonds the surety has already issued for other coal mines, and must not accept bonds from companies that are overexposed to the coal mining industry.

OSMRE must also clarify to state regulators how they should interpret and apply SMCRA's statutory requirement of "contemporaneous reclamation."[25] Ensuring that the smallest possible area is left disturbed and unreclaimed at any given time is the best way for regulators to minimize reclamation costs that may eventually be passed on to the public.

One common objection to implementation of these approaches—tightening bonding requirements and enforcing existing reclamation requirements—is that they will increase costs on mine operators, and thereby accelerate or precipitate mine abandonments. What these objections fail to grasp is that any mine that may be abandoned as a result of such an action has *already* been functionally abandoned. These are the "zombie" mines that appear on paper to be active, but that in reality have ceased all operations, including reclamation. Maintaining the status quo will do nothing to promote reclamation of these sites. The reality is that the operators of these mines have neither the intention nor the means to complete reclamation; and thus the sooner the permits become the responsibility of the regulators, the sooner surrounding communities will be freed from exposure to pollution and the threat of flooding. Furthermore, enforcement of the bonding and reclamation requirements does not constitute imposition of some new regulatory scheme; operators committed to complying with SMCRA—including its reclamation and bonding requirements—when they accepted their permits.

III. The AMLER program is an important source of funding for communities impacted by coal mining and abandoned mine lands

The Abandoned Mine Land Economic Revitalization Program was established in 2016 to return pre-1977 abandoned mine lands (AMLs) to productive use through economic and community development. The AMLER Program provides grants to six Appalachian states and three Indian Tribes with the highest amount of unfunded AML sites. The AMLER program funds projects that benefit local communities and provide ongoing economic benefits through development of new productive uses for former mine land.

To the extent there have been delays in implementation of AMLER funding, these delays are largely attributable to a lack of state staff time to assist project applications. Generally speaking, administration of AMLER grants go through four phases before completion: application, vetting, planning, and implementation. An evaluation of the AMLER program published in June 2022 by Downstream Strategies concluded that the greatest delays in AMLER implementation occur during the planning phase, that the most significant delays occurred in projects with budgets exceeding $5 million, that the duration of the planning phase varied state by state, and that the states with the shortest planning stages were those where state agency staff played the most active role.[26] The report also concluded that the OSMRE vetting phase was comparatively short, and not the primary driver of delays in the overall project development and approval process.

While it is important to promote AML site remediation and to find new productive uses for AML sites, the greatest benefit to coal producing communities will come from preventing the creation of any *new* abandoned mine lands.

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[25] 30 U.S.C. § 1202(3) (one purpose of SMCRA is to "assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations."); 30 U.S.C. § 1265(b)(16) (requiring permittees to "insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with surface coal mining operations . . .").

[26] Downstream Strategies, "Got Five On It: Economic Impacts and Observations of the Abandoned Mine Land Economic Revitalization Program Five Years In," June 7, 2022. Available at https://appvoices.org/resources/reports/GotFiveOnIt-FINAL-6-7-2022.pdf

IV. Conclusion

More than 47 years after Congress passed SMCRA, states have still not eliminated the inventory of unreclaimed abandoned mine land sites already in existence at that time. We cannot afford to add to that inventory. Without prompt action from OSMRE, mine producing regions will see a return to the bad old days of the 1970s. Left to its own devices, the coal mining industry will continue to seek to cut costs by burdening local communities with unreclaimed mine sites, and passing reclamation costs on to taxpayers. And state regulators will continue to turn a blind eye to these issues in an effort to delay for as long as possible the point where unfunded reclamation costs will hit their balance sheets. There is a narrowing window for OSMRE to take action. First, the agency must provide a clear-eyed assessment of the number of mines neither producing coal nor conducting reclamation. Next, it must acknowledge which elements of SMCRA are no longer effective, and must utilize the remaining tools to their fullest extent. Only that way can we avoid the return of dangerous, polluting, economically unproductive abandoned mine lands.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. PETER MORGAN, SENIOR ATTORNEY, SIERRA CLUB

Questions Submitted by Representative Grijalva

Question 1. During the hearing, OSMRE's proposed Ten-Day Notice rulemaking was criticized as creating uncertainty and federal overreach. How would you respond to these criticisms of the rulemaking?

Answer. The ten-day notice ("TDN") provisions of the Surface Mining Control and Reclamation Act ("SMCRA") provide a critical tool for communities suffering from the negative effects of coal mining to seek federal oversight of ongoing violations unaddressed or inadequately addressed by state regulators. Unfortunately, these protections were significantly weakened under a misguided and illegal Trump Administration rulemaking. OSMRE's proposed rule—published in proposed form in the Federal Register (88 Fed. Reg. 24944 (April 25, 2023)) and slated for finalization by February 2024—removes unnecessary and inappropriate barriers to public participation imposed by that 2020 rulemaking and restores policies and procedures that had been in place for decades.

The TDN process was intended by Congress as the communication mechanism by which OSMRE—prior to engaging in oversight enforcement expressly authorized under the SMCRA statute—would provide an opportunity for state regulators to respond to citizen information regarding potential violations of law. Congress bounded OSMRE's deference in order to assure that in the absence of a timely state response, federal inspection would occur so as to assure that potential violations would be addressed and not worsen. The Trump Administration changes skewed the process and would have allowed systemic on-the-ground environmental problems to continue unaddressed over an indefinite period.

OSMRE's proposed rule restores the proper framework of cooperative federalism and supports communities negatively impacted by coal mining in the following ways:

- The proposed rule properly eliminates the unnecessary, burdensome, and unsupported change from the 2020 Rule that allowed OSMRE and state regulators to engage in an open-ended process of information gathering prior to OSMRE issuing a ten-day notice letter to the state regulator. This "pre-review review" offered a means by which state regulators and OSMRE could delay or prevent OSMRE's response to properly filed community-member complaints. Under OSMRE's proposed rule, OSMRE's threshold "reason to believe" analysis would be limited to consulting its own files and publicly accessible electronic databases in addition to the information provided in the complaint. By once again narrowing the sources of information for OSMRE's initial review, the proposed rule will avoid the delays in processing citizen complaints that OSMRE has recognized was created under the 2020 Rule, and will ensure that complaints are promptly processed and acted upon by OSMRE.

- The proposed rule also corrects an additional significant error from the 2020 rule: the elimination of violations relating to permit defects by state regulators from the categories of violations addressable under the TDN process. This approach is consistent with congressional intent and long-standing OSMRE practice. Under the proposed rule, OSMRE will once again be able to address case-by-case violations arising from permit defects promptly via the TDN process, while also recognizing that underlying programmatic issues may then need to be further addressed and resolved via SMCRA's separate Part 733 process for reviewing state programs' compliance with the federal program. This change will allow OSMRE to respond promptly to alleged violations that have the potential to create significant, and potentially permanent, on-the-ground impacts.
- OSMRE's proposed rule also gives effect to SMCRA's promise of robust community participation by eliminating unnecessary hurdles to such participation imposed by the 2020 Rule. Most notably, the proposed rule requires OSMRE to treat any citizen complaint as a request for a Federal inspection whether or not certain "magic words" are used, and ensures that community members who file complaints can accompany OSMRE inspectors on site inspections.

OSMRE retains critical oversight functions in states that have secured primacy, and the proposed Ten-Day Notice Rule ensures that those functions will be carried out with the robust community participation required by SMCRA.

Questions Submitted by Representative Ocasio-Cortez

Question 1. Do you believe the Office of Surface Mining Reclamation and Enforcement (OSMRE) has the authority to address today's coal mining reclamation crisis, or does SMCRA need to be updated to reflect today's industry?

Answer. SMCRA as currently drafted provides OSMRE with tools and authority to begin to address the reclamation and bonding crisis. To date, OSMRE has not made adequate use of those existing authorities. However, in order for OSMRE to fully address the crisis, additional changes must be made to the SMCRA statute.

OSMRE must immediately take the following actions under its existing SMCRA authority: First, OSMRE must collect information on mine production and reclamation status for all coal mines to identify the full set of functionally abandoned "zombie" permits, and must make this information available to the public. Second, OSMRE must conduct stress-tests for all state bond pools and for those surety bond providers that have issued the majority of coal mine reclamation surety bonds. These stress-tests must be based on projections of future mine abandonments based on forecasted trends in coal production, not on historic rates of mine abandonment during periods of time when demand for coal was still high. Third, OSMRE must ensure that states are rigorously enforcing SMCRA's contemporaneous reclamation requirements to ensure every mine minimizes the disturbed, unreclaimed area. Finally, OSMRE must reinstate the policy advisory on self-bonding originally issued in August 2016.

Even if OSMRE were to immediately take these actions, fully addressing the current coal mine reclamation and bonding crisis will require additional changes to the federal SMCRA statute, and to state programs to bring them in line with the amended fFederal program. Legislation is needed to amend SMCRA to require better and more timely assessments of bond adequacy and reclamation progress, including by requiring regulators to reconsider bond adequacy at permit renewal and permit transfer. SMCRA must also be amended to require that mine operation and reclamation plans assess the potential impacts of unplanned mine closure on the cost of reclamation, including whether sufficient spoil exists for reclamation in the event of premature cessation of coal production activities. SMCRA must also be amended to eliminate self-bonding, and to end the use of bond pools by prohibiting the entry of any new permits into existing bond pools and providing a process for states to transition permits out of existing bond pools. Finally, SMCRA must be amended to authorize—and encourage the use of—new financial assurance approaches better aligned with the current reality, such as sinking trust funds, and funding mechanisms for longterm water treatment.

Questions Submitted by Representative Kamlager-Dove

Question 1. A 2021 report from the nonprofit Appalachian Voices, "Repairing the Damage: The costs of delaying reclamation at modem-era mines," detailed the gap in coverage of bonds and the outstanding reclamation work that needs to be done. Can you elaborate on the scale of the bonding and reclamation issue, and what will happen if reforms are not made soon?

Answer. The "Repairing the Damage" report from Appalachian Voices [1] evaluated outstanding reclamation obligations in seven eastern states (Alabama, Tennessee, Virginia, Kentucky, West Virginia, Ohio, and Pennsylvania), estimated the total cost to complete that reclamation, and compared that cost estimate to the available bonding. Using data from OSMRE and state regulators, the report found that across those seven states, a total of 633,000 acres were partially or completely unreclaimed (426,000 acres partially reclaimed, 207,000 acres completely unreclaimed). The report then estimated the total cost to complete that reclamation at between $7.5 billion to $9.8 billion. Meanwhile, total bonding for those permits totaled only $3.8 billion.

Those conclusions are completely consistent with data from other sources. In the recent bankruptcy proceedings for Blackjewel, LLC, the Kentucky coal mine regulator—the Kentucky Energy and Environment Cabinet—looked at 20% of the permits held by the company in that state and found that for the 33 permits studied the actual reclamation cost would exceed the bonded amount by $28 million. In West Virginia, a recent legislative audit report found that individual bonds in the state cover only 10 percent of projected reclamation costs. When one of the largest mine operators in the state—ERP Compliant Fuels—became insolvent in 2020, the state placed the company into a special receivership in order to avoid having to revoke the company's permits and forfeit its inadequate bonds. The legislative audit found that the special receivership held 91 permits for the company, and that those permits were backed by $83 million in reclamation surety bonds. Based on the 10 percent coverage estimate, that means the total reclamation liability for those mines could be as high as $830 million. The West Virginia bond pool contains approximately $36 million, with another approximately $150 million in a separate fund for water treatment, meaning the outstanding reclamation obligations for just the ERP permits would easily wipe out the entire bond pool. The most recent actuarial assessment of Ohio's bond pool found that the pool currently contains $26.4 million. The assessment report concluded that the failure of any of the five largest coal mine operators in the state would wipe out that bond pool, because their reclamation liabilities ranged from $31.6 million to $187 million, with an average liability of $73.3 million.

The consequences and implications of these massive bonding shortfalls are significant. Most obviously, there is the risk that hundreds of millions of dollars in reclamation costs could be passed on to taxpayers. Even then, it would likely take decades for government regulators to complete the reclamation. More than 46 years after Congress passed SMCRA to address the then-existing backlog of abandoned unreclaimed mines, many of those mines still remain unreclaimed. We cannot allow that shameful story to repeat, particularly because unreclaimed modern coal mines pose serious threats to nearby communities in the form of air and water pollution, on-site hazards, and elevated risks of flooding and landslides. In addition, when reclamation bonding is inadequate it gives mine operators enormous leverage over regulators. Regulators become hesitant to enforce the law—including laws meant to protect human health and the environment—out of fear that doing so could prompt an operator to abandon its under-bonded mines and make them the responsibility of the regulator.

Question 2. Nearly three years into the Biden Administration, the agency that oversees and enforces reclamation of active and abandoned coal mines, the Office of Surface Mining Reclamation and Enforcement (OSMRE), still does not have even a nominee for Director. What is the impact of not having a Senate-confirmed Director of OSMRE?

Answer. The dramatic changes currently affecting the coal mining industry—most notably the significant and permanent decline in demand for coal, and increasing numbers of mine abandonments—require a radical change in approach from OSMRE. The drop in coal production and lack of interest in new permits, and resulting threats to reclamation and bonding programs, mean that OSMRE and state regulators cannot continue to implement SMCRA according to the status quo

[1] https://appvoices.org/resources/RepairingTheDamage_ReclamationAtModernMines.pdf

that has prevailed for the preceding 46 years. Instead, OSMRE must immediately implement a major course correction that realigns the agency with the new reality. Such a change in agency mission and approach requires the type of leadership best provided by an administration-nominated and Senate-confirmed Director. It is too much to ask of career staff to initiate and oversee the required change in approach. The Biden Administration should prioritize nominating and securing confirmation for an OSMRE director who acknowledges that coal mining is in permanent decline, that mines across the country are under-bonded and inadequately reclaimed, and that there is an enormous risk of mines being abandoned in an unreclaimed condition that threatens nearby communities.

Question 3. If the Committee takes one thing away from this hearing, what would you want that to be?

Answer. The main thing I hope the members of the Subcommittee will take away from my testimony is that we are experiencing a coal mine reclamation and bonding crisis driven by the permanent decline in demand for coal, and that there is a narrowing window for OSMRE and Congress to act to address the crisis and protect impacted communities.

The crisis is here. As demand for coal decreases, so too does coal production, which means less revenue coming into the coal mining industry. Those mines that are still operating are choosing to put their limited resources toward coal removal rather than reclamation. Hundreds of mines have already been abandoned unreclaimed, with workers laid off and equipment removed. But poor recordkeeping requirements, combined with regulator complacency, have conspired to hide the true number of these functionally abandoned "zombie" mines. The negative impacts from these zombie mines—in the form of air and water pollution, onsite hazards, and increased risk of flooding and landslides—will continue to grow.

OSMRE can still act to address this crisis. Specifically, OSMRE must provide a clear-eyed assessment of which mines are no longer producing coal nor conducting reclamation. This will alert nearby communities to sources of pollution and other threats, and will allow regulators and Congress to accurately assess the scale of the problem and the need for immediate action. OSMRE must also acknowledge which elements of SMCRA are no longer effective, and must utilize the remaining tools to their fullest extent.

Congress, too, must act. Congress must strengthen SMCRA to eliminate harmful provisions such as self-bonding, require additional permit reviews to better assess bond adequacy and reclamation progress, and authorize—and encourage the use of—new financial assurance approaches better aligned with the current reality.

Only through this sort of quick and decisive action that recognizes and addresses the present crisis can we avoid the return of dangerous, polluting, economically unproductive abandoned mine lands.

Mr. STAUBER. Thank you, Mr. Morgan.

Our final witness today is Mr. Kyle Wendtland. He is Administrator of the Wyoming Department of Environmental Quality, Land Quality Division, out of Cheyenne, Wyoming.

Mr. Wendtland, you are now recognized for 5 minutes.

STATEMENT OF KYLE WENDTLAND, ADMINISTRATOR, WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY, LAND QUALITY DIVISION, CHEYENNE, WYOMING

Mr. WENDTLAND. Good morning, Mr. Chairman, Ranking Member Ocasio-Cortez, and members of the House Subcommittee. My name is Kyle J. Wendtland, and I am the Administrator of the Wyoming Department of Environmental Quality, Land Quality Division. My testimony today will focus on the Title V coal program.

Wyoming surface coal mines are world-class operations nationally and internationally in safety, size, scale, production, reclamation, and environmental performance. And these mines contribute the greatest portion of funding to the fee-based National Coal

Abandoned Mine Land Cleanup program and black lung compensation.

If I were to classify the relationship between Wyoming and OSMRE, it would fall into three categories. These include an agency that is paralyzed in its ability to make timely, efficient, and prioritized decisions; mistrust within the OSM organization itself; and failure to conduct meaningful engagement with its state partners.

First, I will address the paralyzed aspect in the context of Federal mine plan approvals. Even under the most aggressive energy transition projections, the need for reliable and affordable Wyoming thermal coal baseload power will continue well into the 2040 to 2050 time frame, and coal has other beneficial uses such as coal-to-fiber, liquids, and rare earth mineral extraction. Carbon sequestration programs such as Carbon Safe and the Inflation Reduction Act 45Q may further extend the need to utilize Wyoming coal reserves.

Deputy Director Owens testified to this Committee on May 16, 2023, that the proposed Fiscal Year 2024 budget focuses on funding OSMRE's core mission responsibilities and supporting the highest priority efforts and activities. However, Wyoming continues to see unprecedented Federal mine plan approval delays at OSMRE headquarters.

As noted in my written testimony, OSMRE has changed its NEPA policy three times, and taken 3 years to determine that the Black Butte Federal Mine Plan must now restart the NEPA process and conduct an EIS.

Wyoming Governor Gordon sent a letter on April 25, 2023 to Secretary of the Interior Deb Haaland, and the Wyoming Congressional Delegation has reached out to OSMRE outlining the serious concern over the delays in the approval of the Black Butte Federal Mine Plan. The response has been and continues to be deafening silence from OSMRE headquarters since July 2023.

Review of the Black Butte timeline provided in my written testimony underscores that the approval process through OSMRE is broken. The process has become politicized, and the NEPA process has become weaponized. The end result is costly permitting delays, increased land disturbance and mining costs, delayed reclamation, fuel supply reliability concerns for the nation's baseload power, and lost revenue to Federal and state governments.

Now I will address OSMRE delays in the approval of state program amendments and mistrust within OSMRE. Wyoming and other states continue to see unconscionable delays in the approval of state program amendments. A state program amendment is public noticed and receives legal review from a state Attorney General and a regional technical staff and solicitors prior to OSMRE headquarters' final review and approval.

OSMRE's inability to approve a state rule change is best exampled by the Wyoming Wind Turbine Blade Disposal Program amendment. The University of Cambridge estimates that there will be 43 million tons of blades needing to be disposed of by 2050. The Wyoming Turbine Blade Program amendment received no public comments at the state or Federal level, and has been endorsed by the coal and wind industries as a responsible and sustainable

solution to the disposal of these blades. Approval of this program amendment is a clear win for everyone. However, OSMRE headquarters has second-guessed and continues to mistrust its regional technical staff and solicitors, and has held this program amendment for 843 days with no sign of action.

The Interstate Mining Compact Commission has also engaged OSMRE on this issue. OSMRE staff agreed to provide IMCC with the agency program amendment status sheet for all states, and after 356 days IMCC has still not received this information.

It is clear that OSMRE does not trust the reviews provided by the state, its regional staff and solicitors, and Wyoming respectfully requests that OSMRE begin working cooperatively with Wyoming to address the major concerns I have highlighted in my testimony for the Committee today.

I would like to thank the Committee for the opportunity to present this information, and I would be happy to stand for questions.

[The prepared statement of Mr. Wendtland follows:]

PREPARED STATEMENT OF KYLE J. WENDTLAND, WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY, LAND QUALITY DIVISION ADMINISTRATOR

Good Morning Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the House Subcommittee on Energy and Mineral Resources. My name is Kyle J. Wendtland and I am the Administrator of the Wyoming Department of Environmental Quality Land Quality Division (WDEQ LQD).

I am here to testify on Examining the Biden Administration's Abandoned Mine Lands and Active Mining Program. More specifically I will address the Office of Surface Mining Reclamation and Enforcement (OSMRE) Title V program Federal Mine Plan Approvals (FMP), National Environmental Policy Act (NEPA) reviews, Program Amendment (PA) approvals, Revisions to the 2020 Ten Day Notice and proposed Dam Safety rules, and Title V funding grants.

Wyoming Coal Background:

The Surface Mining Control and Reclamation Act (SMCRA) was adopted by Congress in 1977 and Wyoming's Title V coal program was approved on November 26, 1980. Wyoming has 43 years of experience in successful coal leasing, mine permitting, reclamation, and successful implementation of the Title V and Title IV SMCRA coal programs. Wyoming's surface coal mines are unique nationally and internationally in both size and scale. Wyoming currently manages 25 active coal permits, and these coal operations are some of the most efficient, low-cost operations in the nation. These mines boast world class safety, reclamation, and environmental performance records. In 2022, Wyoming mines produced 41% of the nation's coal (244,265,803 tons) used for reliable and affordable baseload thermal energy across the nation. Coal contributed $563 million dollars in taxes, royalties, and fees to Wyoming's economy in 2022. In addition, Lease Bonus Bids have provided additional revenue to the nation and Wyoming. Since 2003, approximately $4.5 billion has been paid in Bonus Bids to the federal and state governments. These funds are split between the federal and state government, and Wyoming has received approximately $2.3 billion in Bonus Bid funding for school capital construction since 2003. The Wyoming coal mines also contribute the greatest portion of fee funding for the national coal Abandoned Mine Land (AML) cleanup program, and Black Lung compensation.

OSMRE Federal Mine Plan Amendment Approvals and NEPA:

Wyoming has embraced an all of the above energy strategy. The state recognizes both the need for and value in having a diverse energy production portfolio. This strategy recognizes the clear and continued need for coal produced from Wyoming mines. The coal produced in Wyoming has and will continue to power the nation's baseload thermal energy production for decades to come. Even under the most aggressive energy transition predictions, the need for reliable and affordable thermal coal baseload power will continue well into the 2040 to 2050 timeframe. The

need for the nation's security and economy will demand that the power grid remain reliable, stable, affordable, and require the use of dispatchable coal fired power.

It should also be noted, that although Wyoming coal may be initially leased for thermal power generation, other beneficial uses are developing. Coal to fiber, coal to liquids, rare earth mineral extraction, bio char, etc. are all becoming viable alternative uses for coal. In addition to these alternative uses, carbon sequestration programs such as Carbon Safe, and the Inflation Reduction Act (IRA) 45Q program may further extend the use of thermal coal. Wyoming has Class VI injection well primacy from the Environmental Protection Agency (EPA), and is a leader in CCS/CCUS law, policy, regulation and projects. More than a decade ago, the Wyoming Legislature separately enacted a statutory framework for CCS and CCUS projects, including permitting. These developing markets for Wyoming coal further underscore the need for OSMRE to continue to approve Federal Mine Plans in a timely and efficient manner.

The OSMRE Deputy Director Ms. Glenda H. Owens testified to this committee on May 16, 2023 that "the proposed FY 2024 budget focuses on funding OSMRE's core mission responsibilities and supporting the highest priority efforts and activities". As noted in the discussion above, coal is and will continue to be needed now and into the future as the country balances the need for affordable, reliable, and dispatchable energy as power generation transitions are made. The continued approval of mining the nation's coal reserves in a responsible manner to ensure reliability and affordability of electricity is clearly one of the core and high priority functions of the OSMRE. However, OSMRE is not providing support for or approving these core activities in a timely, predictable, and prioritized manner.

Wyoming continues to see Federal Mine Plan (FMP) approval delays at the OSMRE headquarters level. The state is currently waiting for two FMP approvals. To provide the committee with context and foundation it is important to first outline the process of amending a coal lease to an existing mine permit. Prior to OSMRE review of a FMP, the coal leasing action and permit application has been through multiple legal, regulatory, and NEPA reviews. The Bureau of Land Management (BLM) oversees the federal coal leasing activities in Wyoming. The BLM conducts a Resource Management Plan (RMP) and NEPA analysis that outlines and discloses to the public the coal reserves available for lease and issues a Record of Decision (ROD). When a coal lease or amendment action is applied for, BLM conducts a separate NEPA analysis and ROD on the individual coal lease. Once the operator has successfully completed the coal sale process and has ownership of the leased coal, a permit amendment is applied for through the WDEQ LQD Title V coal program. The permit goes through a rigorous technical review and additional public notice in order to complete the state permitting process. Upon completion of the state permitting process, the amended permit is then sent to OSMRE regional office for oversight review. The OSMRE regional office reviews the technical aspects of the FMP for compliance with state regulation and subjects the FMP to an additional, third NEPA analysis. By the time the amendment package reaches OSMRE headquarters for issuance of a Right of Entry Letter (REL), the FMP has undergone three NEPA reviews and three legal reviews (e.g. the BLM RMP, the Coal Lease EIS, the state permitting process, the OSMRE Federal Mine Plan EA/EIS, the state Attorney General and federal BLM and OSMRE regional Solicitor legal reviews) and multiple public notice and comment periods. In order to best outline the impacts of OSMRE's current review process of a FMP, the Black Butte Mine (BBM) FMP is a keystone example.

- January 15, 2021: the BBM received approval from WDEQ to amend the existing permit to include the additional coal reserves.
- On February 16, 2021: OSMRE sent BBM a Mine Plan Decision Document questionnaire, and BBM submitted the completed form to OSMRE on February 21, 2021.
- On March 23, 2021: OSMRE notified BBM that the NEPA analysis completed by BLM in 2017 *would be sufficient* for the project to receive OSMRE approval *and no further* Environmental Assessment (EA) would be required.
- On April 14, 2021: OSMRE informed the BBM that given *changes* in the Federal Administration and directive under Executive Order (EO) that further NEPA analysis *would now be required*. BBM was encouraged to hire a third-party contractor to assist OSMRE with the NEPA process in order to reduce approval time. BBM hired one of the three contractors recommended by OSMRE.
- June–September, 2021: multiple project delays were incurred during this timeframe. The list of reasons noted during bi-weekly meetings included a

lack of personnel at OSMRE, additional projects on OSMRE staff work lists, and lost paperwork by OSMRE.

- September 24, 2021: the EA was completed and submitted to OSMRE staff for review and on October 27, 2021 OSMRE region submitted the EA to the regional DOI Solicitor (SOL) for review.
- December 20, 2021: the regional SOL completed review and the EA was sent back to OSMRE staff for review prior to final editing by the third-party contractor.
- February 25, 2022: the EA was provided to the third-party contractor for revisions.
- March 2, 2022: third party contractor completed its responses and edits to the SOL comments and provided the revised EA back to OSMRE. On April 6, 2022 a second round of comments were generated from the SOL and responded to by the BBM third party contractor.
- April 13, 2022: a new timeline was approved by OSMRE for the project. The thirty-day Public Comment Period was scheduled to begin on April 19, 2022.
- April 14, 2022: OSMRE notified BBM and the third-party contractor that OSMRE leadership informed OSMRE region that the Public Comment Period could not begin until April 27, 2022. OSMRE further informed BBM that in order to process the MPDD BBM would first need to fill out a Questionnaire. This is the same Questionnaire that was provided to OSMRE one year prior on February 21, 2021.
- April 20, 2022: during the bi-weekly update call with OSMRE, the third-party contractor and BBM received approvals to proceed with Public Comment Period on April 27, 2022. Notice was published in the local newspaper and paid for by BBM.
- May 3, 2022: OSMRE notified BBM that the Assistant Secretary of Land and Mineral Management (ASLM) had notified OSMRE headquarters that they *will not* initiate the public comment period until they have written and approved a National Press Release for the project. The ASLM provided BBM with no timeline for this press release and no reason as to why the change and need for this requirement.
- May 11, 2022: OSMRE sent notice to BBM that the new Federal Administration had informed OSMRE that all public-facing NEPA documents would be reviewed *by four solicitors above the regional SOL*. OSMRE refers to this group as Front Office SOL's. No further information was provided to BBM as to who these new solicitors would be or how long the process would take.
- May 23, 2022: the new submission process required that the BBM EA and unsigned FONSI first be sent back again to the regional SOL for review. This re-review was completed by the same SOL that had already reviewed and signed off on the EA in late 2021 and early 2022.
- July 2022: OSMRE informs BBM that a change and new requirement in the EA will be needed to address the Social Cost of Carbon Greenhouse Gas (SC-GHG) analysis that they use for all new NEPA documents and that this change will need to be validated by DOI prior to being implemented.
- December 22, 2022: regional SOL granted authority to load the EA into DTS for the Front Office SOL review. On January 3, 2023 the BBM EA and unsigned FONSI were uploaded into DTS for Front Office SOL review.
- February 8, 2023: OSMRE informed BBM that the fourth and final Front Office SOL had not signed off or provided any comments. In hearing no response, BBM engaged state and congressional staff for assistance and to discuss the two plus years of project delays by OSMRE headquarters.
- October 3, 2023: BBM received notification from OSMRE that the BBM would *now be required to re-start* the entire process and complete an EIS in place of the EA for the BBM Federal Mine Plan Modification.

OSMRE has taken three years to determine that the BBM FMP must now restart the NEPA process completely and conduct a new EIS in place of the EA. Wyoming is experiencing similar unconscionable delays related to a second FMP approval for the Antelope Mine, and neighboring states are having similar difficulties and delays in receiving FMP approvals. Based on the BBM example Wyoming has legitimate concerns over OSMRE headquarters' ability to approve the BBM and pending Antelope Mine (AM) FMP amendments in an efficient and timely manner. Because

of these concerns, the Honorable Governor Gordon sent a letter on April 25, 2023 to Secretary of Interior Deb Haaland, outlining the continued delays and concerns in the approval of the BBM FMP. Review of the BBM timeline, and OSMRE headquarters delays, further underscores that the FMP approval process through OSMRE is broken and no longer completed per the regulatory requirements. It is concerning that the OSMRE process has become politicized and the NEPA process weaponized. The delays by OSMRE are resulting in costly permitting delays, increased land disturbance, increased costs to mining, delayed reclamation, fuel supply reliability concerns for the nation's baseload dispatchable power, and lost revenue to the federal and state governments.

OSMRE and State Program Amendments:

Wyoming and other states continue to see excessive delays in the review and approval of Program Amendments (PA). The need to process and approve a PA can be the result of a state initiative, or an OSMRE oversight initiative. However, the fundamental process for submission and approval is similar. The process typically begins with a state statute or rule change. The state then develops rules through the rulemaking process to develop regulations that are *as effective* as the federal SMCRA provisions. In Wyoming, new or revised rules are first submitted and public noticed to the Land Quality Advisory Board (LQAB) for review; the rule package is then moved to the Environmental Quality Council (EQC), public noticed and then a decision by the EQC to promulgate the rule package is made; if approved by the EQC, the rule package is then moved to the Governor's office for review and final signature. Following the Governor's signature, the state prepares a PA to the Title V program rules and regulations for submission to OSMRE. The PA submission is first sent to the regional OSMRE office for review. Following the regional OSMRE review and approval, the PA is sent to OSMRE headquarters for final review, Federal Register (FR) publication, public comment, and final processing. Through the course of this process, the PA is public noticed a minimum of three times and has received legal review from a state Attorney General, and regional OSMRE solicitors (SOL), prior to final review at OSMRE headquarters. In order to add context to the processing of a PA by OSMRE, the Wyoming Wind Turbine Blade Disposal PA provides a recent example:

- July 1, 2020: the Wyoming Legislature and the Governor enacted HB0129 to address the wind waste issue and provide for the responsible disposal of damaged and outdated inert wind turbine blades and towers in the final pit voids and end walls of surface coal mines in Wyoming.
- April 29, 2021: Wyoming developed and signed new rules into law that are as effective as the SMCRA requirements. These rules went through the required Wyoming rulemaking administrative process as outlined above.
- June 4, 2021: the WDEQ submitted the required formal PA to the OSMRE regional office for technical and regional solicitor (SOL) review.
- July 22, 2021: Wyoming received a letter from OSMRE region stating "we have not identified any issue of particular concern to the public or industry in this rulemaking" and the PA was made available for public notice.
- August 4, 2021: the PA was published in the FR (WY–049-FOR Proposed Rule Notice) on August 4, 2021. The comment period ended on September 3, 2021 and OSMRE received no public comment on this PA.
- OSMRE headquarters has not acted on approving this PA since September 2021. As of the date of this testimony, OSMRE has had this PA in review for 843 days.

Wyoming determined the need and proposed a solution to address the growing issue of responsible disposal of damaged or outdated wind turbine blades and towers. Disposal of the inert blades and towers in municipal landfills is not a viable long term or sustainable option because of the volume of landfill space required. In addition, there are no known scalable recycling uses for these waste materials. At the time Wyoming HB0129 was passed in 2020, there were approximately 70,000 turbine blades awaiting final disposal and the number has only increased since that time. The University of Cambridge estimates that there will be 43 million tons of blades needing to be disposed of by 2050. Wyoming HB0129, proposed rules, and FR publication received *no* adverse public comments, and have been endorsed by the coal and wind industries as a responsible and sustainable solution. Approval of this PA is a win for the coal industry, the wind industry, and the public. The lack of communication from OSMRE and the delay in approval of this Wyoming PA raises concerns as to the priorities of the agency. Wyoming congressional staff has also

inquired as to the status and approval of this PA. OSMRE's last correspondence with Wyoming staff occurred in December 2022. The continued silence from OSMRE regarding this PA approval after 843 days of review has been deafening. It is unfortunate that the Wyoming example outlined above is not an isolated event related to OSMRE PA approvals. The Interstate Mining Compact Commission (IMCC) has also engaged OSMRE on this issue. IMCC on behalf of its member states has requested a copy of the "Status Sheet" that OSMRE maintains to determine the point in the process of each state's respective pending PA's. OSMRE staff has stated that IMCC would be provided a copy of this status sheet for the past 356 days. To date, IMCC has not received this information. This further demonstrates OSMRE's lack of communication and the unwillingness of OSMRE to be transparent in its process with primacy states and the public.

The OSMRE Deputy Director has stated that there are currently fifty-five PA's awaiting approval at headquarters. It should also be noted that during the past decade, there have been no fewer than forty PA's waiting for approval. Based on the lack of transparency and communication by OSMRE, Wyoming has legitimate concerns over OSMRE headquarters' ability to approve the two pending PA's in anything resembling a reasonable timeframe. The inability for OSMRE to process and approve a state PA's is problematic on several fronts, and most importantly prevents states from updating and implementing new regulatory requirements in a timely manner. OSMRE currently has PA's that have not completed processing for more than a decade, and the best response time of a Wyoming PA approval has been four years. It is clear that the approval of PA's is not considered a "core mission responsibility" as stated by OSMRE's Deputy Director's public testimony on May 16, 2023.

2023 Ten Day Notice Rule Revision:

Wyoming has had exclusive regulatory authority over coal mining under Title V of SMCRA since 1980. Wyoming is concerned about the April 25, 2023 proposed rule changes to the Ten Day Notice (TDN) and Corrective Action for State Regulatory Issues and Regulations. As published by OSMRE, the proposed revisions will fundamentally alter the federal-state cooperative federalism relationship under SMCRA in ways that are inconsistent with the exclusive regulatory authority SMCRA confers on states. Wyoming also has great concern that the factual basis OSMRE provided for the proposed rules (less than two years of experience and data collection) in the Federal Register, as it is significantly different than the state experience under existing law.

The OSMRE has attempted to justify the proposed rulemaking by stating that the 2023 proposed rules will "*increase efficiency and make it easier for citizens to report possible violations*" and "*simplify the processes for filing a citizen complaint and requesting a Federal inspection*". Wyoming disagrees with this conclusion. The proposed rules add unnecessary administrative overhead, deadlines and required formalized documents to address each complaint in the event OSMRE has "reason to believe" a *potential* violation exists. In contrast, with the existing 2020 Federal Register (FR) notification discussing the Ten-Day Notice (TDN) rules, a major focus and justification for the revised rules was that instead of expending resources on paperwork exercises, the State and OSMRE should work cooperatively to address issues, and in particular, resolve any "on the ground" actions that are necessary to protect public health and safety in a timely manner. Unfortunately, the 2023 TDN rules, as written, take a step backwards and OSMRE proposes to insert itself as the singular lead regulator in place of the State Regulatory Authority (SRA). This places the state in a position of merely justifying its response to any issue a citizen may present to OSMRE regardless of the merits of a citizen's complaint. It is important to note, that OSMRE has come to these conclusions with two years or less of experience with the 2020 finalized rules. OSMRE has stated that there has been a "wave of citizen complaints" that show the State Regulatory Authorities (SRA's) have been inadequately addressing citizen's complaints or not implementing their programs effectively. However, this OSMRE claim appears to be baseless as OSMRE has provided no evidence to support the claim nor has Wyoming been able to verify this claim. Further, OSMRE has to date not responded to a public records request to obtain these data filed by the Interstate Mining Compact Commission (IMCC) on May 31, 2023.

The SRA's were not consulted as a cooperator prior to, or during the 2023 rule development. The first opportunity the SRA's had to review the 2023 rule revisions was the publication of the draft rule on April 25, 2023 (88 FR 24944). To be a meaningful partner, OSMRE should have engaged the SRA's early in the rule development process, rather than a meager sixty-day comment period following the publication of the proposed rule. OSMRE has unilaterally revised a functional, efficient,

and cooperative process, without clear evidence of need. The OSMRE has ignored its requirement and responsibility to engage the SRA's as a partner in a meaningful manner that represents cooperative federalism. For example, the 2020 rules used the term "*cooperative federalism*" nineteen times when discussing the rules; in contrast the 2023 proposed rules use the term only three times. The 2023 proposed TDN rules simply do not achieve the goals of being more efficient or effective than the existing 2020 rules. For the reasons stated above and those identified in Wyoming's letter dated June 23, 2023, this proposed rulemaking should be abandoned and OSMRE should engage in meaningful dialogue with the states to determine if there is a factual need to make any adjustments to the existing 2020 TDN rule.

Dam Safety Proposed Rulemaking:

The OSMRE planned rulemaking regarding dam safety, specifically to address the findings of the Interior Department's Inspector General in its December 27, 2012 Report No. WR-EV-MOA-0015-2011 (Inspector General's Report) regarding Emergency Action Plans (EAPs) and After Action Reports (AARs), is an item of concern to Wyoming. There is no requirement or need for a nationally applicable OSMRE regulation regarding EAP's for dams. The Inspector General's Report (IGR) identifies the absence of an EAP requirement as a deficiency in OSMRE's federal regulatory program. However, just because the Inspector General identified this as an item for review by OSMRE, it does not mean that this is an issue for the states. In fact, this is not an issue at the state level. In the event OSMRE determines a need to take action and develop rules to resolve concerns raised by the IGR, its action should be limited to whatever is necessary to correct any deficiencies that exist at the federal level, without interfering with state emergency response functions.

If OSMRE adopts a rule that mirrors existing state EAP requirements, which may be impossible as minor differences may exist from state to state, this will establish separate and competing lines of authority over EAP's and their execution. The proposed rules have the potential to cloud the lines of jurisdiction of state emergency preparedness response and management agencies and the Department of Homeland Security's Federal Emergency Management Agency (FEMA). If OSMRE inserts itself into this process, there is real risk that two inconsistent and competing plans will be implemented in the event of a real emergency. There must be one single plan for response to a dam emergency, with one single set of clear directions for communication channels and government authority vested in only one place.

The states should be engaged by OSMRE in a cooperative and meaningful manner to promote cooperative federalism before any draft dam safety rule is finalized and released for public comment. The IMCC has offered to serve as a facilitator between the states and OSMRE to ensure that meaningful and preferably in-person engagement occurs on this topic prior to the drafting of any rule for these purposes. However, OSMRE has to date elected not to engage the states and has stated that the proposed dam rules are expected to be released by the agency as early as the second quarter of 2024.

Title V Grant Funding:

Wyoming, as well as other states, have passed legislation to increase base pay for employees to account for the rise in the cost of living and inflationary pressure. These pay raises are also an attempt by the state(s) to remain competitive in the marketplace and continue to attract high quality and talented personnel. Wyoming has approved pay increases in each of the past two years. At the same time these raises have been enacted, the Title V program grants to the state have remained flat. There is a funding gap that continues to grow, as the Title V grant is not keeping pace with these inflationary budget adjustments. Wyoming recommends that OSMRE work cooperatively with the states in evaluating and addressing this funding gap in the 2025 budget process.

Summary:

In summary, the need for reliable and affordable thermal coal fired baseload power will continue at least into the 2040 to 2050 timeframe. Current and potential new uses of coal are most promising, both in economic and environmental terms. Actions, or rather lack of action by OSMRE has imperiled critical access to the nation's vital coal reserves. The lack of cooperative federalism in the approval of Federal Mine Plans, NEPA reviews, Program Amendment approval, rule development, and Title V program funding has and continues to erode the trust between the state and OSMRE. In Wyoming, with an approved and successful primacy program over the last 43 years, OSMRE's role should be confined to oversight through

a limited audit program, research requested by the state, and technical assistance at the request of the state. OSMRE headquarters is unnecessarily re-reviewing regional approvals, implementing new and continuous duplicative requirements, continues to delay needed state actions, and question regional OSMRE technical staff and solicitor decisions. This lack of confidence and trust within the OSMRE agency itself is at best concerning. The OSMRE decision making process has become mired in political agenda and administration policy, not sound regulatory requirements, technical merit, and fact-based science. This has paralyzed the OSMRE decision making abilities and created mistrust within the agency. The OSMRE is no longer functional nor is it working cooperatively with the states and in the public best interest.

I acknowledge that much of the above information came from a variety of sources, including, but not limited to, the WDEQ, the IMCC, the Wyoming Mining Association, and the Black Butte Mine. I would again like to thank the committee for the opportunity to submit this testimony and appear before you today.

Please find the following reference material attachments to this document:

- Governor's letter of April 25th on Black Butte Mine and OSMRE July 10, 2023 response
- WDEQ Program Amendment Submission Letter Dated June 4, 2021
- OSMRE Program Amendment Transmittal Memo
- Wyoming Program Amendment Federal Register Publication Dated August 4, 2021
- Wyoming Letter of June 23, 2023 comments on the Ten Day Notice Rulemaking

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QUESTIONS SUBMITTED FOR THE RECORD TO MR. KYLE J. WENDTLAND, ADMINISTRATOR, WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

Questions Submitted by Representative Ocasio-Cortez

Question 1. Congress made its intention clear in the Infrastructure Investments and Jobs Act that the abandoned coal mine land and reclamation funding should create good paying jobs for displaced coal workers and incentivize union labor. (30 USC 1231a(f): "priority may also be given to reclamation projects described in subsection b(1) that provide employment for current and former employees of the coal industry"; 30 USC 1231a(b)(3): "applying/or grants under paragraph (1), States and Indian Tribes may aggregate bids into larger statewide regional contracts," and 42 USC 18851: "all laborers and mechanics employed (. . .) on a project associated in whole or in part by funding made available under this division (. . .) shall be paid wages at rates not less than those prevailing on similar projects in locality".) How are you implementing the employment priorities included in the law, and are you in touch with the United Mine Workers of America and the AFL-CIO on how best to do so?

Answer. As stated in my written and oral testimony, I appeared before the committee to address the Wyoming Department of Environmental Quality (DEQ) Title V coal program. The question asked is related to the DEQ's Title IV Abandoned Mine Lands (AML) program. Wyoming DEQ offers the following response related to the Title IV program question:

The Title IV Wyoming program questions are best addressed by being broken into four key areas:

1) Priority "may" be given to reclamation projects that provide employment for current or former coal mine workers.

   Wyoming's State Statute W.S. 9-2-3006(a)(ii)(B) requires that the lowest responsible bidder be awarded the contract. This Wyoming Statute complies with the provisions of 2 CFR 200.320 Methods of procurement to be followed. Wyoming DEQ also offers the following factors to consider.

   a) How is a former employee of the coal industry defined? Wyoming has repeatedly requested OSMRE to define this category of employee but that definition has not been provided.

b) A former employee of a coal mine is not a protected class of worker (e.g., minority) in Wyoming. Therefore, a former coal employee cannot be given any priority status over another worker.

2) Aggregation of bids into larger statewide or regional contracts.

Aggregation of bids presents several challenges to contracting requirements that the Wyoming DEQ AML Division must follow. For example:

a) Wyoming procurement laws allow a 5% preference applied to in-state contractors over out-of-state contractors.

b) Aggregating projects could disqualify Wyoming-based contractors who may not be able to qualify for bonding on large projects. It is not in the best interest of the State of Wyoming to disqualify Wyoming-based and highly experienced contractors in our bidding process by aggregating projects.

3) Employees paid prevailing wages on similar projects.

Following the Amendments to SMCRA in 2006, Wyoming has received its 50% fee-based AML coal share from the U.S. Treasury and not the AML Trust Fund. Consequently, the Davis-Bacon prevailing wage provisions have been applied to Wyoming contracts since that time to present.

4) Is Wyoming in touch with the United Mine Workers of America or AFL-CIO

The Wyoming AML Division has had no communications with the United Mine Workers of America nor the AFL-CIO.

Supplemental Information: Wyoming DEQ would also like to clarify that several blanket statements made in the written and oral testimony related to reclamation bonding are not applicable to the Wyoming DEQ Title V program. Wyoming is a full cost bonding state and does not use bond pools.

Further, Wyoming DEQ completed updates to its reclamation bonding program in 2018, modernizing and strengthening bonding requirements. In 2021, Wyoming also created a cash based and state backed instrument called an Assigned Trust to further strengthen Wyoming's reclamation bonding program. Wyoming has over 43 years of experience in the calculation of reclamation bonds and is very confident in the adequacy of the bond amounts and the state's ability to collect on those bonds if necessary.

Mr. STAUBER. Thank you very much for your testimony, Mr. Wendtland, and I want to thank all the witnesses for their testimony.

As I told you earlier, the votes have been called. I am going to recess the Committee. We have two votes, and we will come back as quick as we can and start questioning.

So, the Committee stands in recess.

[Recess.]

Mr. STAUBER. The Energy and Minerals Resources Subcommittee will come back from recess.

And before I get to my questioning, I would like to enter a statement from the National Mining Association into the record.

Without objection, so ordered.

[The information follows:]

Statement for the Record

National Mining Association (NMA)

The National Mining Association (NMA) appreciates the opportunity to provide the House Natural Resources Subcommittee on Energy and Mineral Resources with written testimony in response to the committee's examination of the Biden administration's Abandoned Mine Lands (AML) and active mining programs. The NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources. The NMA's members conduct coal and hardrock mining operations throughout the U.S. and, as such, have a shared interest in the cleanup and reclamation of historic coal AMLs and related activities.

Historical Issues with AML Oversight

While today's mining industry plans for the restoration and reclamation of mined land even before mining occurs, that was not always the case. To address the issue of legacy mining sites, since 1977, modern coal mining companies have been paying fees on each ton of domestically-produced coal into a fund—the AML Reclamation Fund—to reclaim high-priority coal mines abandoned or not sufficiently reclaimed before 1977. Unfortunately, after 46 years and more than $12 billion paid into the fund, little has been accomplished to restore priority 1 and 2 (P1 and P2) sites.

The AML fund has repeatedly been an attractive target for diverting coal industry funds to projects and activities not intended under the law. According to the Department of the Interior's Inspector General (DOI-OIG), the lack of oversight, 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. Additionally, high federal and state administrative costs have also diverted funds from their core purpose.

While the DOI-OIG's 2023 Final Inspection Report[1] on the Office of Surface Mining Reclamation and Enforcement's (OSMRE) AML program found that OSMRE had made progress on implementation of its 2017 recommendations, more needs to be done to meet existing deadlines and ensure greater performance of the program. Notably, OSMRE's July 2022 guidance did take a step in the right direction by outlining funding priorities, stating that P1 and P2 projects directly related to coal mining practices would be considered first. That said, OSMRE and states must fight the urge to divert funding away from the high priority coal inventory and ensure prioritization of P1 and P2 coal AML sites.

Ten-Day Notices

In April, OSMRE proposed a rule[2] to modify the way the agency deals with Ten-Day Notices (TDN) under the Surface Mining Control and Reclamation Act (SMCRA). SMCRA sets forth a deliberate regulatory scheme in "primacy states" where operators are required to comply with only state law and regulations, dealing with the state as its regulatory authority. The proposed rule, as written, will significantly increase the likelihood of surface mining operators becoming subject to two—often conflicting—regulatory directives, of disrupting operations, and of impairing their ability to meet contract terms for supplying coal to customers by repealing recent clarifications that OSMRE finalized[3] in 2020.

According to OSMRE, the agency began reconsidering the 2020 rule in 2021, and decided to conduct this rulemaking the same year. It is worth noting that OSMRE did not even gain a full year of experience under the 2020 rule before deciding to propose a repeal and revision.

Further, OSMRE has failed to show that the 2020 rule resulted in any material delays in considering possible violations or actual burdens preventing citizens from engaging in the process for identifying possible violations and alerting the state regulatory authority and OSMRE. As such, there is no justification for the proposed rulemaking and the proposed rule should be withdrawn.

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[1] DOI Office of Inspector General, March 2023
[2] 88 Fed. Reg. 24,944 (April 25, 2023)
[3] See 85 Fed. Reg. 75,150 (Nov. 24, 2020).

Continued Funding

Importantly, the Infrastructure Investment and Jobs Act (IIJA) included[4] nearly $11.3 billion for legacy abandoned coal mine reclamation activities to be made available to eligible states and tribes annually for 15 years. While this is significant in helping the continued cleanup and reclamation of historic coal AMLs, funding without strict adherence and prioritization of P1s and P2s sites under the program is not a durable, long-term fix.

Since its inception in 1977, the coal AML program fee—paid exclusively by coal producing companies—has been extended ***eight*** times, most recently in the IIJA, through 2034. This means at its current expiration, it will have been in existence for 57 years—decades past its intended life span. This should provide the committee with a sense of perspective and urgency to reform the administration of the program to deliver the funding solely to its intended purpose.

Protecting Reliability and Revenues

Coal mining has been a national energy and economic success story. In addition to providing a low cost, reliable source of energy for all Americans and material for steel manufacturing, coal provides substantial revenues to the federal, state and local governments through royalties, bonus payments and rents. This is in addition to a price per ton AML fee paid by coal companies for reclamation activities.

Unfortunately, federal policy governing coal production—especially on federal lands—has been whipsawed back and forth depending on who controls the White House. The Biden administration has repeatedly failed to grasp that, in addition to generating significant revenues, coal production drives economic development, job creation and retention, and provides electricity reliability and U.S. competitiveness in building critical infrastructure. In addition, the administration's continued pursuit of a suite of U.S. Environmental Protection Agency regulations to force coal-fired power plant closures and continuation of the Department of the Interior's moratorium on the Federal Coal Leasing Program threatens our nation's energy security negatively impacts our communities that depend on coal production, and deprives funds for coal reclamation activities.

Conclusion

A robust domestic coal mining industry, supported by the right federal policies, is essential to provide affordable and reliable energy and to fund AML reclamation priorities. The NMA supports the reclamation of AML sites but urges appropriate oversight of the fund to ensure industry and taxpayer funds are used effectively and efficiently, on the priority reclamation projects for which the funds were intended. Only with such oversight can we avoid the historic misuse of AML funding.

Mr. STAUBER. I will start my 5 minutes of questioning. Again, thanks to all the witnesses. We really appreciate you being here.

Deputy Director Owens, Mr. Wendtland's testimony explained that after several years and three rounds of NEPA review, your office determined just last month that the mine plan amendment for the Black Butte Mine could not be approved as written. Instead, the entire process must be started over, this time as an Environmental Impact Statement.

Before my question, Deputy Director Owens, how long have you been with OSMRE?

Ms. OWENS. Representative Stauber, I have been the Deputy Director of the Office of Surface Mining Reclamation and Enforcement since 2001.

Mr. STAUBER. OK, so 22 years?

Ms. OWENS. Yes.

Mr. STAUBER. OK. Why did it take so many years and rounds of review, and not to mention official correspondences, including from

[4] P.L. 117-58 Section 40701(f)

the governor of the state, to get a response from your agency on this single decision referencing the Black Butte Mine?

Ms. OWENS. Thank you for that question, Chairman Stauber.

As you know, making the mine plan decisions and rendering those requires a NEPA review. Those NEPA reviews require many technical reviews and analyses.

Mr. STAUBER. Ms. Owens, with all due respect, three NEPA reviews, 3 years. No correspondence for the last 6 months. I find that unacceptable because if you were in the private sector, you would be out of business not responding like that.

Mr. Wendtland, in your testimony, you discuss Black Butte as an example to show that the OSMRE process has become politicized and the NEPA process weaponized. Do you still feel that is the case, or would you like to provide your perspective on Ms. Owens' answer on the mine plan amendment?

Mr. WENDTLAND. Thank you for that question, Mr. Chairman, and I would like to provide a perspective here.

First off, we have to go back, that the Bureau of Land Management is the coal leasing agency. And in order to lease coal, a BLM resource management plan goes through, discloses the coal that is available. And then, when the coal is actually leased, it conducts another NEPA review. And they are in charge of leasing and selling the coal and getting it to the public.

OSMRE's review is about the mine plan. It is about the impacts within the mine permit boundary. And OSMRE has expanded that review now to go on into even questioning BLM's own NEPA reviews between the agencies. And I believe that OSMRE and their NEPA reviews need to be brought back to within their lane. They are outside of their lane of review, and that is what is adding time and stress to the system.

Mr. STAUBER. Ms. Owens, many states have expressed concerns about the so-called recommendations your agency created for applications for the $11.3 billion in IIJA funding for AML cleanup. These extra considerations have taken time away from state regulators doing their job, and take resources away from filling the hole in the ground. Why has your agency seen fit to place new considerations on IIJA funding for AML cleanup, when the program already has clearly defined goals and considerations in statute, and in spite of the many concerns expressed by impacted states?

Ms. OWENS. Thank you, Chairman Stauber. As you know, the $11.3 billion that the BIL provided to the abandoned mine land program is a once-in-a-generation exponential increase of resources to address the problems associated with Abandoned Mine Land programs.

When the Bipartisan Infrastructure Law, BIL, was passed 2 years ago, one of the first things we did was to determine that we would provide guidance to the states in terms of what new requirements or what additional requirements would be associated with their use and receipt of those funds. We could have taken a regulatory route, and that would have been a protracted action for us. It would have——

Mr. STAUBER. Ms. Owens, just because my time is limited, and I do appreciate your response, not that I agree with it, but I want to ask Mr. McCament.

You have heard Ms. Owens' response now. In your experience with OSMRE's treatment of the active coal mining program in your state, does it seem to be a fair assessment? And I will ask you, Mr. McCament, and then Mr. Morin and Mr. Wendtland for quick answers to that.

Mr. MCCAMENT. Thank you, Mr. Chairman. I would say that our state effectively implements the coal program according to the SMCRA regulations, and we follow all the provisions of that rule. And I would say that we are effective regulators in our state.

Mr. STAUBER. All right. Mr. Morin?

Mr. MORIN. I think we could use increased collaboration with the states and OSMRE, and not just in word only, but actual meaningful collaboration where our input is heard and then seen in the implementation guidance documents we are provided.

Mr. STAUBER. Mr. Wendtland?

Mr. WENDTLAND. Mr. Chairman, SMCRA says that the requirements are as effective as, not as stringent as, and it also confers very specific primacy rights to the states. And because of that, the states are the principal regulator. Wyoming has been that regulator for 43 years of the 47 years of the program. We are very confident in Wyoming's regulatory program, and OSMRE's role should be the oversight role that SMCRA envisioned.

Mr. STAUBER. And assisting in a positive way.

My time is up, and the next individual, Representative Kamlager-Dove, you are up for 5 minutes.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair, and thank you, Ranking Member.

Ms. Owens, we have heard several complaints so far from the other side of the aisle about how bureaucracy is holding up getting money out to the states and tribes that Congress authorized in the Infrastructure Investment and Jobs Act.

I will remind my colleagues that cutting agency funding, as proposed in their appropriation legislation, won't help. We are talking about more than $11 billion of new Federal funding over 15 years. It is an enormous ramp-up of these mine cleanup programs, and I expect it will take time. And I also believe that we want to see it done right.

So, how are you assisting state programs in ramping up their capacity?

And what would the Republican proposed cuts do to that assistance?

Ms. OWENS. Thank you for your question, Representative.

I am not aware of the cuts through the budget, but among the things that we are doing to assist the states, we have given them the Fiscal Year 2022 BIL grants, we got those out. We have already begun to process and got seven Fiscal Year 2023 grants out.

We have improved our training programs. We have established at least four new training programs that are focused on the new requirements of the BIL requirements, as well as providing training to new employees because both OSMRE and the states are bringing in new employees so that we can administer and get these grants out, and get the funds out, and get them out to the states

so they can actually begin to get those projects on the ground and working.

We also are putting additional information into our AMLER system, identifying and working with them on developing metrics so that we indeed will be able to measure the success of this program and do it responsibly. As you point out, this is so much more funding than we have had, so we want to make sure that it is maximized. We only have 15 years. This is not just a program that is going to go on forever. And within the 15 years, we need to get it right. And our approach to this was let's get it right from the beginning, which is why we took time to get that bill guidance out in the first place. We couldn't just put billions of dollars out there.

I mean, some of these states have 5, 10 times money under the BIL grants than they have under their AML fee-based grants. So, we wanted to provide some additional guidance for them to make sure that it was going to be consistently applied across the program, and that it would result in success and achieve the goals that the BIL funds were provided in order to achieve.

Ms. KAMLAGER-DOVE. Thank you.

And Mr. Morgan, I have some questions for you. I have limited time, so hopefully we can get through them quickly.

You have been raising concerns about this bankruptcy and abandonment issue for a while, so why didn't we see these systemic bonding failures earlier?

And did coal companies know that their bonds would not hold up?

Mr. MORGAN. Thank you for the question, Representative. I think the difficulty that your question alludes to is that there is a significant disjunction between what we are seeing on paper in terms of what regulators are reporting in terms of the status of mines, and then the actual lived experience of communities near these mines.

On paper, mines appear to be active. But in reality, in many cases, they have been long abandoned, workers laid off, equipment removed, left un-reclaimed. And that has prevented us from getting an accurate assessment of the actual state of the coal mining industry.

Ms. KAMLAGER-DOVE. So, you referenced the problem of functionally abandoned permits. What exactly do you mean by that, and why is it a problem?

Mr. MORGAN. These are those permits I was just describing, where on paper they appear to be active coal mines but in practice they have been abandoned and often left in an un-reclaimed state.

And because regulators are aware that the sites are underbonded, the regulators are hesitant to take the sort of enforcement actions that are required, because if they recognize the reality that these are abandoned mines and they revoked the permits and forfeited the bonds, there isn't the money available to complete the reclamation, meaning either taxpayers are responsible for those costs or the communities are left living next to dangerous unreclaimed mine sites.

Ms. KAMLAGER-DOVE. Thank you. My time is up. I have additional questions that I will refer to the Committee so that we can get answers later on from you.

Thank you so much, and I yield back.

Mr. WESTERMAN [presiding]. The Chair now recognizes the gentleman from Wisconsin, Mr. Tiffany.

Mr. TIFFANY. Thank you, Mr. Chairman.

Mr. Morgan, do you believe coal use should be ended in the United States of America?

Mr. MORGAN. I believe the market is speaking to that, and coal is no longer cost competitive.

Mr. TIFFANY. Do you view Boiler MACT, I am sure you are familiar with that regulation from about a decade ago, do you view that as a market force?

Mr. MORGAN. I believe that there are a lot of headwinds against the coal industry that, even if you removed one or two, the overwhelming dynamic is going to be continued decline.

Mr. TIFFANY. Is Boiler MACT a market force?

Mr. MORGAN. I believe it is internalizing an externality and having the industry bear the costs of its pollution. So, yes.

Mr. TIFFANY. I appreciate your answer. Boiler MACT is a Federal regulation. Let me give you an example of its failure of what you call market forces.

I have a mill in my district that installed a smokestack. They had to put up a higher stack, and the company invested north of $10 million in that. Do you know how much it reduced in emissions?

Mr. MORGAN. I do not.

Mr. TIFFANY. None, zero. It didn't reduce emissions at all. And this company had to spend $10 million of precious capital. That is not a market force, I can guarantee you that much.

Mr. McCament, was the 10-day rule working for you guys in Ohio?

Mr. MCCAMENT. Yes.

Mr. TIFFANY. Mr. Morin, was it working in Alabama?

Mr. MORIN. I am here solely for Title IV. I don't do the regulatory side of things in my state.

Mr. STAUBER. And Mr. Wendtland?

Mr. WENDTLAND. Absolutely, yes. The 2020 rule was a good rule.

Mr. TIFFANY. Ms. Owens, are you rewriting that rule, the 10-day rule?

Ms. OWENS. Yes, Representative. We are rewriting the rule.

Mr. TIFFANY. What is the deficiency? Why are you rewriting that rule within your agency?

Ms. OWENS. Well, when we reviewed the rule, there were several aspects of it that we determined we wanted to revisit. Among them were what we felt were unnecessary burdens that were placed on citizens who wanted to either file a complaint, a citizens complaint, which the SMCRA gives them the right to do, and we wanted to make sure that they were having that opportunity without undue burdens in doing that.

Mr. TIFFANY. Thank you. Would you say your Bureau has issues with bandwidth and staffing at times that causes delays? I mean, we have heard some about that.

Ms. OWENS. I am sorry, I didn't get the first part of your question.

Mr. TIFFANY. Does your Bureau have issues with staffing at times, and just bandwidth to be able to get these processes done that causes delays?

Ms. OWENS. Well, yes, we do have staffing issues, as many agencies do.

Mr. TIFFANY. So, why would you pull this back from the states? Why would you pull this back with the 10-day rule that is working, as these gentlemen to your left have said, why would you pull that back if you have staffing issues, if you have delays that are happening as a result of, call it bandwidth or staffing delays?

Ms. OWENS. Thank you for your question, Representative.

We have resources that review our regulations. And one of the things that we did at the beginning of this Administration was to review regulations to determine if there were aspects of those regs that required our taking another look at them, and that is exactly what happened with the 10-day notice rule.

So, we do have adequate staff to look at that rule, and we have now proposed some amendments to the——

Mr. TIFFANY. Mr. McCament, do you expect the emissions in your state to be reduced by the Federal Government taking additional authority away from you by amending or changing the 10-day notice rule?

Mr. MCCAMENT. No, we do not. I think we would expect that we would spend more time and less cooperation with OSMRE in investigating legitimate complaints with the reversal in the rule.

Mr. TIFFANY. As a result of delays, we actually could see more emissions by projects not getting done. Would that be correct?

Mr. MCCAMENT. Yes, spending more time in responding to complaints that we have already responded to previously or have data or information on. So, yes, it could cause further delays.

Mr. TIFFANY. Ms. Owens, have you been instructed to stop or slow roll applications for coal projects?

Ms. OWENS. No, sir, I have not.

Mr. TIFFANY. Have you had anyone from the White House contact you and send a clear message that they want coal stopped?

Ms. OWENS. Absolutely not.

Mr. TIFFANY. Mr. Chairman, I yield back.

Mr. WESTERMAN. The gentleman yields back. The Chair recognizes the Ranking Member, Ms. Ocasio-Cortez, for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you, Mr. Chair.

Coal mining has, and much of the abandonment of these mines, has left a toxic legacy of contaminated soil, polluted waters, and public health disasters across the country. And while I am proud of the more than $11 billion passed in the Infrastructure Investment and Jobs Act to help states and tribes clean up abandoned coal mines, I do think it is important to reiterate that these are not costs that the American public should have to pay.

This is a responsibility of mines and private companies that inflict this damage, and it is yet another example of the ways in which these large companies often privatize benefits and profits, and socialize the costs and harm. And for the public to have to pick up the tab on this demonstrates the failure for us to properly assign and enforce that responsibility, that financial responsibility, where it belongs.

The mines we are cleaning up with the IIJA funds were abandoned before SMCRA was enacted, the law to insure coal companies clean up after themselves. Mr. Morgan, in just a couple of sentences, to make sure that we can refresh the folks that are following along at home, what is SMCRA in the most simple terms possible, and how does it apply differently to mines that were abandoned before and after it was enacted?

Mr. MORGAN. Thank you, Ranking Member.

SMCRA was passed by Congress in 1977 to address the then-present crisis of thousands of abandoned mines across the country, and it sought to address that in two ways. One was through creating Title IV, which is a fund used to clean up the existing inventory of abandoned mine lands present at that time. But Congress also wanted to avoid a recurrence of those abandoned mines, so SMCRA also includes Title V, which primarily consists of two components. One is a reclamation requirement that companies conduct reclamation contemporaneously with coal removal, and then the second part is a bonding requirement which ensures that, if a company does go out of business, there are adequate funds to the regulator to complete the mine cleanup.

Ms. OCASIO-CORTEZ. Thank you, Mr. Morgan. Yet, as we heard earlier in your testimony today, many modern coal mines are going un-reclaimed. And right now, we are at risk of yet another wave of abandoned mines, another wave of destroyed land, another wave of environmental and health outcomes.

Mr. Morgan, if SMCRA was meant to ensure that modern reclamation would be fully paid for by the industry, these are the folks that are supposed to be paying for it, then how did we get to this point of these abandoned modern mines?

And how are companies actually evading their health care, pension, and reclamation responsibilities?

Mr. MORGAN. There are three primary problems with the implementation of SMCRA that is leading to these problems.

First, the contemporaneous reclamation requirements are not being enforced, which allows mine operators to accumulate significant acreages of disturbed land. And then, when those companies run into financial difficulties, that increases the reclamation burden passed on to taxpayers.

The second part is when regulators set bond amounts they fail to require adequate bonding. So, in the recent bankruptcy of Blackjewel, the Kentucky regulator in the bankruptcy proceedings filed documents saying that they looked at 20 percent of the company's permits, so that was 33 permits, and they found a reclamation bonding shortfall on those 33 permits of $28 million.

And then the third problem is the form of bonds that are provided are ones that do not ensure that the money will be there. So, many of the eastern states rely on bond pools, which don't have adequate funding and are at great risk of being overwhelmed by the bankruptcy of even a single operator. Even surety bonds, which are supposed to be the most secure, run into difficulties because a very small number of surety bond providers have issued the overwhelming number of those bonds, meaning that if they fail, which they could do if even one big mine operator goes out of business,

it would wipe out that surety and all of the bonds they have provided.

Ms. OCASIO-CORTEZ. Great, thank you very much, and I yield back to the Chair.

Mr. WESTERMAN. The gentlelady yields back. The Chair recognizes the gentlelady from Wyoming, Ms. Hageman, for 5 minutes.

Ms. HAGEMAN. Thank you, Mr. Chairman, and a special thanks to each of the witnesses for being here today.

It is no secret that over the past few years we have experienced substantial delays, unclear, and oftentimes conflicting guidance and overbearing requirements for coal mining states and communities because of this Administration's war on fossil fuels.

While the BLM has promulgated rule after rule to make it more difficult for energy-producing states to produce affordable, reliable energy such as coal, the Office of Surface Mining Reclamation and Enforcement has now decided to prioritize the cleanup of abandoned mine lands based off of certain socioeconomic factors. These new priorities ultimately make it more difficult for coal communities in my home state to secure Federal funding. Many coal communities are not deemed as so-called environmental justice communities, whatever that means, according to CEQ, and will therefore struggle to meet the outlined requirements when it comes to recovering lands impacted by abandoned mines.

Ms. Owens, why is the OSMRE making it more difficult for communities in my home state of Wyoming to secure funding for AML remediation?

Ms. OWENS. Thank you for the question, Representative Hageman.

I don't believe that the Office of Surface Mining is making it more difficult for your state to receive funding.

Ms. HAGEMAN. Well, but you are doing the funding based upon these certain environmental justice requirements that have essentially excluded the state of Wyoming. Are you aware of that?

Ms. OWENS. I am aware of the requirements.

I also would like to point out that those, along with several other of the provisions that are contained in our bill guidance, we are encouraging states to take certain actions——

Ms. HAGEMAN. Environmental justice requirements?

Ms. OWENS. Yes.

Ms. HAGEMAN. OK.

Ms. OWENS. We are encouraging them to do so.

Ms. HAGEMAN. OK. During the previous administration, OSMRE partnered with BLM and other sister agencies to perform dual NEPA analysis, share data, and better improve the process of getting Federal coal permits out the door, which should actually be the mission of your agency. But since 2021, this effort we are told, is stalled, and what began as an attempt to speed up permitting is now the complete opposite.

State agencies and operators alike have communicated to me that OSMRE is now just a roadblock that single handedly delays coal mining and thwarts the permitting process. What is OSMRE doing to become more than just a regulatory roadblock for the coal industry?

Ms. OWENS. Thank you for your question, Representative.

What we are doing is we are implementing the requirements of NEPA, which is a requirement for all Federal——

Ms. HAGEMAN. NEPA, as amended? NEPA, as amended earlier this year?

Ms. OWENS. NEPA, whatever the law is on the books at the time that we take our actions, we implement the law on the books.

Ms. HAGEMAN. OK, but the NEPA was amended earlier this year. It is on the books now.

Ms. OWENS. Yes.

Ms. HAGEMAN. So, are you taking the changes in NEPA, the amendments to NEPA into consideration when reviewing these permits?

Ms. OWENS. If they have been promulgated, those regulations have been promulgated, yes, we are.

Ms. HAGEMAN. Well, the statute has been promulgated.

Ms. OWENS. Yes.

Ms. HAGEMAN. The amendments have gone into effect. Are you not aware of that?

Ms. OWENS. Yes, ma'am, I am.

Ms. HAGEMAN. OK.

Ms. OWENS. And we are implementing NEPA law and regulations and guidance.

Ms. HAGEMAN. As it exists now?

Ms. OWENS. Yes.

Ms. HAGEMAN. Program amendments are absolutely vital to the states, and often are a result of state legislators passing bills to help their state coal programs. OSMRE, however, has failed to process these permits in a timely manner, resulting in a backlog of state program amendments that go all the way back to 2006.

Why doesn't OSMRE work through state program amendments in a timely manner?

Ms. OWENS. Well, as you may be aware, Representative, the state program amendments often involve technical reviews. We have to consult with technical, legal reviews, analyses. We consult with any other Federal agency——

Ms. HAGEMAN. So, are you saying it takes up to a decade to process these programs?

Ms. OWENS. Well, I think you may be talking about a rare situation. I am not aware of any state program amendment that has not been processed since 2006.

Ms. HAGEMAN. OK, but that has been the circumstance that we have experienced. So, I would request that we expedite those programs so that they can go forward.

Ms. OWENS. Well, I thank you for that suggestion. But as a matter of fact, I have directed the staff to take a look at ways that we could expedite the review of state program amendments, and also to identify processes that would help us streamline, and also address the backlog. We are very much aware of that, and we are taking actions so that we can address it.

Ms. HAGEMAN. OK, I appreciate that.

I am out of time, so I yield back.

Mr. WESTERMAN. The gentlelady yields back. The Chair recognizes the gentleman from Montana, Mr. Rosendale, for 5 minutes.

Mr. ROSENDALE. Thank you very much, Mr. Chair and Ranking Member Ocasio-Cortez, for holding this hearing today.

Montana is home to 3 of the top 20 most productive coal mines in America. So, this issue is critical to my constituents. Furthermore, Montana boasts the largest estimated recoverable coal reserves nationwide, constituting approximately 30 percent of the total U.S. reserves. Despite these significant reserves, Montana has experienced a steady decline in coal production since the Obama administration, with a drop of nearly 900,000 tons in the past year alone.

Now, while my colleagues across the aisle would like to attribute this to a lack of demand, we just know that that is not the case. The case is that this supply, this production, has been reduced simply because of the radical environmentalists' ability to keep us from mining those very critical energy reserves. Mining stands as the lifeblood of Montana, woven into the fabric of our state's culture and tradition. Regrettably, this industry has been under consistent scrutiny from the Biden administration and the climate activists.

The three mines that are located that I mentioned face constant delays by the Biden administration in completing environmental impact studies, which are essential for initiating new mining projects. The Spring Creek Mine is anticipated to deplete permitted coal in May 2024, with an expected EIS completion date of November 2024. The Bull Mountain Mine is projected to exhaust permitted coal in September 2024, with an expected EIS completion date of June 2025. The Rosebud Mine in Colstrip, Montana is set to deplete permitted coal in April 2024, with an expected EIS completion date of March 2025. Notice the pattern here. The EIS dates are projected to be beyond the date when they are going to deplete their coal reserves that they have available to them at this moment.

Yet, there are incredible coal deposits there that are still available to be mined. Each of these mines individually provides crucial jobs and energy to my constituents and to the rest of America. The potential loss of all three would be disastrous for Montana, leading to energy insecurity and leaving many residents unemployed with no immediate prospects. This goes to show how urgently our country needs permitting reform.

Despite being one of the few issues that has bipartisan support, the Biden administration has exhibited extreme hesitation in pursuing the NEPA reforms. These reforms are not only necessary, but need to be implemented promptly to ensure our nation can efficiently utilize its natural energy resources, maintaining energy independence amidst a volatile global landscape. It is unacceptable that, in less than a year, these mines may no longer produce permitted coal, forcing Montanans to rely on foreign adversaries to meet their energy needs.

This process must be streamlined urgently, or our states and our nation's energy security will face peril. I hope the testimony and questioning today will shed light on these critical issues, fostering bipartisan solutions that will secure and maintain our country's independence and the energy sector for the coming decades.

Ms. Owens, could you elaborate on the reasons behind the continued delay in issuing the EIS reports for these mining projects?

Ms. OWENS. Thank you for your question, Representative.

The requirement for the review of the mine plans that you mentioned require us to apply NEPA, it is a requirement. Recently, we have had ongoing court decisions that have had a direct impact and bearing on our NEPA review of these various mine plans. And, in fact, as a result of these court decisions, we have had to reassess and make changes in our NEPA review, based on the legal requirements. We have to make sure that we adhere to those decisions.

We want to make sure that, when we render a decision, that it will pass judicial——

Mr. ROSENDALE. OK, so I didn't hear the reasons, Ms. Owens, and I hate to cut you off, but I have a very limited amount of time here. I need reasons, OK? And what I have seen typically in the past is somebody didn't cross a T or dot an I properly, and you use the system in order to delay the ability to approve this.

Ms. OWENS. To the contrary——

Mr. ROSENDALE. Mr. Chair, I see that my time has expired. I am going to have to yield back.

Mr. STAUBER [presiding]. Thank you very much.

The gentleman from Georgia, Mr. Collins, you are up for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chair and Ranking Member, for having this meeting.

Folks, as someone who doesn't have a coal mine but uses coal, I guess you could say I am a consumer in Georgia. About 20 miles from my house is Plant Scherer, which has four units that produce electricity using coal. And out of the four units, one is shut down. And in a recent visit while I was there, I asked them why.

And it just so happens that, just as a side note, this was the most profitable way of producing electricity for this other state that was selling it to their consumers. But they shut it down due to a backlash, or being forced to, which really didn't make any sense when they were sitting there showing us the stacks and how clean the air that comes out of these stacks are now, and how clean the coal is being burned.

So, it makes me wonder exactly what is the problem here, and what is going on. And I kind of want to bounce off of what my colleague, Mr. Rosendale, was talking about. He is talking about active mines, and I want to look at active mines and some of the abandoned mines, as well. All that to be said, I have just a few questions real quick.

Mr. Morin, is that how you pronounce your name?

Mr. MORIN. Yes, sir, that is fine.

Mr. COLLINS. All right. Well, you are an Alabama boy, but you have a different name. You know, we have short names in——

Mr. MORIN. Yes, Morin will be fine.

Mr. COLLINS. Morin, OK. To your knowledge, does anyone in the Office of Surface Management policymaking group in its headquarters office, do they have any experience in operating an Abandoned Mines Land management program?

Mr. MORIN. Not to my knowledge, no, sir.

Mr. COLLINS. And what effect may that lack of technical expertise have?

Mr. MORIN. It shows in their guidance and their implementation policies, which is why I requested not only collaboration in word, but meaningful collaboration with state program managers. We do possess unique knowledge of what it takes to get these projects on the ground and operational, reclamation projects, so I feel like they deprive themselves by not listening to our input and incorporating it into their guidance.

Mr. COLLINS. Thank you, I appreciate that.

Ms. Owens, I have heard that the substantial increase in the Abandoned Mine Land funding from the IIJA that was mentioned earlier is causing some states to divert their limited state resources from the active mining programs to their AML programs. This is being done, I think, in an attempt to make the most of those valuable AML grants. And I think this is where Mr. Rosendale and I were kind of, I was listening for his answer.

So, what is the Office of Surface Mining Reclamation and Enforcement doing to ensure that active mining programs don't suffer because of the rush to spend that money on those AML programs?

Ms. OWENS. Thank you for that question, Representative.

If the states are organized as the Federal program, there are two programs: Title IV, which is the AML; and Title V, which is the active mining. We have staff, each of those programs has staff that are familiar with and operate those programs.

I am not aware that states would be pulling their Title V staff to do the Title IV, particularly since with this BIL money, one of the first things that we at OSMRE did was to identify the positions that we would need to effectively implement the BIL program, and get those grants out to the states so that they would have resources, they would be able to bring on additional staff and resources.

And I know it has been a challenge. It has been a challenge at the Federal level, it has been a challenge at the state level because we are all looking for the same staffing and resources——

Mr. COLLINS. So, you would agree that they are diverting staff to go after the Abandoned Mine——

Ms. OWENS. I am not aware that they would be diverting the Title V——

Mr. COLLINS. But you are aware that these active mines are having problems. I mean, Mr. Rosendale just alluded to that.

Ms. OWENS. I am sorry, that they——

Mr. COLLINS. That the active mines are having a problem getting their projects either reapproved or approved.

Ms. OWENS. Well, we——

Mr. COLLINS. And would you not agree that the people are using their staff to go after the IIJA money instead of helping these active mines?

Ms. OWENS. I am not aware of that fact, sir.

Mr. COLLINS. Even though Mr. Rosendale just gave you a prime example of coal mines in his district?

Ms. OWENS. He asked me if that were happening. It is not happening in our Federal program.

Mr. COLLINS. And he provided an example. All right. Is it true that the backlog of pending state plan amendments include some revisions that are going all the way back to 2009?

Ms. OWENS. I am aware of one situation in which that is the case.

Mr. COLLINS. So, you wouldn't say there is a backlog?

Ms. OWENS. I did say there is a backlog. In fact, as we speak, the staff is looking at ways to improve our procedures so that we can streamline that process so that we can get rid of that backlog.

Mr. COLLINS. All right. Thank you.

I am sorry, I went over. I yield back. Sorry about that.

Mr. STAUBER. Thank you very much. The next one up is the Chair of the Full Committee.

Mr. Westerman, you are up for 5 minutes.

Mr. WESTERMAN. Thank you, Mr. Stauber, and thank you to the witnesses.

Mr. Morin, you have testified that OSMRE's collaboration with states and tribes is just in name only. Has it always been that way?

Mr. MORGAN. Thank you for the question, Representative——

Mr. WESTERMAN. I said Morin, not Morgan.

Mr. MORGAN. I am sorry.

Mr. MORIN. No, it hasn't always been that way, but we did identify and meet with our counterparts at OSMRE in January of this year, over the last several years there has been a deterioration in the relationship, and a lot of that deterioration you can trace back to states trying to provide input into ways to shape the implementation of this program and the AMLER program more efficiently, and that input seems to go by the wayside when we get the official guidance release from OSMRE.

Mr. WESTERMAN. So, what recommendations would you have to improve the working relationship between OSMRE?

Mr. MORIN. We are trying work groups, and I think we have had some success with some of the state OSMRE work groups. But continuing that discussion and getting states involved earlier in the process, oftentimes when we get a guidance or some new information from OSMRE, it is released to us at the same time that it is released to the public. There have been times where non-governmental organizations identify the release of a new guidance document before it has been sent directly to the states. So, giving states——

Mr. WESTERMAN. So, somebody is working in collaboration with the NGOs is what——

Mr. MORIN. They seem to peruse the website more frequently than somebody who is managing a state program, so we think some of them learn about it that way.

Mr. WESTERMAN. Yes, we think some of them may actually be running the programs in the Federal agencies.

Mr. McCament, your testimony mentions that Ohio has six state program amendments that are still pending approval dating back to 2015. Mr. Morin and Mr. Wendtland said there are 55 total plan revisions waiting in DC. What have you heard from OSMRE about why these approvals are taking so long?

And what is the consequence of not allowing these state programs' changes to occur?

Mr. MCCAMENT. Sure, thank you for that question.

The impact to us of not having those approved is that, if we have a new program amendment that we need to issue, then it just adds to that backlog, right? And these changes need to be made by state laws and state rules to make sure that we are meeting the intent of SMCRA, so there needs to be a process that those move quickly and are approved and in an engagement process. And most of those, as we get annual updates on those, are just in some review step.

Mr. WESTERMAN. And Mr. Wendtland, I know that you would think reclaiming abandoned mines would be a bipartisan issue, and speaking of delayed state program amendments, you provided an example in your testimony of how the state of Wyoming was trying to allow retired wind turbines to be used to backfill mine land sites, and you did this back in 2020, but the program amendment has been under review at OSMRE for 843 days.

I was out in the state of Washington a year or so ago in the DOE laboratory there. They said that a fact that a lot of people don't realize about windmills is that 25 years from now there is not a single windmill in operation that will be in operation. So, there is going to be a huge need for places to landfill all these windmill blades.

Has OSMRE given you any explanation of what is taking so long?

Mr. WENDTLAND. Mr. Chairman, Representative Westerman, no, they have not. We have been sitting and waiting.

And this is a good win for everybody. The coal industry, the wind industry all supported the state initiative here. And it also provides a revenue stream at mine closure which accelerates reclamation. So, we just cannot see what the holdup with this program amendment is.

Mr. WESTERMAN. Ms. Owen, would you like to answer that question? What is the hold-up?

Ms. OWENS. Thank you for your question.

Actually, the issue of the placement of those blades is one of the aspects of that proposal that requires legal review. And we have been and continue to make sure that we get this right because if SMCRA doesn't allow those wind blades to be placed on those sites, we cannot approve it. So, we are making sure that our approval of or review of this——

Mr. WESTERMAN. I am sure that clarified it for everybody.

In my last few seconds here, I am doing a little tally of agencies that are following the law and breaking the law. And Ms. Hageman mentioned this. I know you have talked about going through the NEPA process. You can either just say we are breaking the law, or you can tell me how you are implementing the FRA limits on NEPA of either 1 year for an EA or 2 years for an EIS. The floor is yours.

Ms. OWENS. Well, I wouldn't say we are breaking the law.

Mr. WESTERMAN. Are you implementing the law?

Ms. OWENS. NEPA? Yes we are implementing——

Mr. WESTERMAN. Are you implementing the 1-year and 2-year requirements that were passed bipartisan in the House, bipartisan in the Senate, and signed by President Biden?

Ms. OWENS. We are assessing our timetables——

Mr. WESTERMAN. Not are you assessing. Are you following the law?

Ms. OWENS. We are attempting to follow the law——

Mr. WESTERMAN. Not attempting to follow the law. Are you following the law?

Ms. OWENS. We are doing our best to come within the timelines that have been established in the law.

Mr. WESTERMAN. Well, can you provide the Committee with a timeline of specific projects that you will have completed by the 1-year time frame and the 2-year time frame?

Ms. OWENS. Can I provide you with a list?

Mr. WESTERMAN. Yes.

Ms. OWENS. I can provide you with a list.

Mr. WESTERMAN. With specifically projects, when they will be completed in 1 year if they are an EA, or in 2 years, maximum, if they are an EIS.

Ms. OWENS. I understood your question, and I will——

Mr. WESTERMAN. When will you have that list?

Ms. OWENS. I will have to go back and see when we can make it available.

Mr. WESTERMAN. Let's do it in about 2 weeks.

I yield back.

Mr. STAUBER. Thank you very much, Chairman Westerman. I think that your questioning is very relevant, because they are not following the law.

When Congress writes legislation and it becomes a law, it is not a recommendation or a feeling to follow the law. You must follow the law. EA: shot clock 1 year. EIS: shot clock 2 years. That is the bipartisan piece of legislation that was signed into law by the President, and it is simply unacceptable that agencies within our Federal Government are not even following the laws that we wrote and that they must follow. So, it is unacceptable.

I thank the witnesses for their valuable testimony and the Members for their questions.

The members of the Subcommittee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Friday, November 17. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 12:11 p.m., the Subcommittee was adjourned.]