

Statement of Dustin Morin, Director, Mining and Reclamation Division, Alabama Department of Labor re. *Examining the Biden Administration's Abandoned Mine Lands and Active Mining Programs* before the Energy and Mineral Resources Subcommittee of the House Natural Resources Committee – November 14, 2023.

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 (NAAML), 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 IJA 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 IJA 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 IJA, 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 IJA, 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 IJA 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 IJA 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 IJA 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 IJA 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 IJA 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 IJA 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 IJA 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 IJA 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 IJIA-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 IJIA-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 IJJA 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 IJJA 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 IJJA implementation.

A second reason that OSMRE's current plan for the IJJA 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 IJJA 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 IJJA inventory funding so that they can in turn receive the IJJA funding they need for reclamation.

Collaborating with States on Implementation Plans

At the core of the problems with OSMRE's IJJA 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 IJJA, 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 IJJA funding, beginning before the IJJA 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 IJJA implementation. The roundtable meeting and workgroups led to good results on several aspects of IJJA 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 IJJA 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 simple 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.