

Statement of Autumn Coleman, Program Manager, Abandoned Mine Lands Program, Montana Department of Environmental Quality on Behalf of the National Association of Abandoned Mine Land Programs and the Interstate Mining Compact Commission re Legislative Hearing on H.R. 1731, Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More Act (RECLAIM ACT) Before the Subcommittee on Energy and Mineral Resources of the House Natural Resources Committee – April 5, 2017

Good morning, Mr. Chairman and members of the Committee. My name is Autumn Coleman and I am the Program Manager of the Abandoned Mine Lands Program within the Montana Department of Environmental Quality. I currently serve as Secretary-Treasurer for the National Association of Abandoned Mine Land Programs (NAAML P). I am appearing here today on behalf of NAAML P and am also representing the interests of the Interstate Mining Compact Commission (IMCC), with whom NAAML P works closely.

NAAML P and IMCC are multi-state governmental organizations that together represent over 30 mineral-producing states and Indian tribes, 28 of whom implement federally-approved abandoned mine land reclamation programs authorized under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). Through these organizations, the state and Tribal AML programs are united in achieving the goals and objectives of SMCRA as set forth by Congress – including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining.

Introduction

The bill before the Committee today, H.R. 1731 (the “Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More Act of 2017” or “RECLAIM Act”), highlights the ongoing struggle of historic coal communities and the vital role the state and Tribal AML programs play in their restoration. The impact of unreclaimed AML sites on these communities’ health, safety, and environment conspire to suppress economic development and dampen opportunities for a bright future. Impacts include impairing critical water resources, constraining areas suitable for commercial ventures, and smothering property values, among other things.

We intend this testimony¹ to address the states’ and Tribes’ perspectives on 1) the role our AML programs play in revitalizing the economies of historic coal country; 2) how to

¹ Mr. Robert Scott, Director of the Kentucky Division of Abandoned Mine Lands, is providing complimentary testimony on behalf of NAAML P and IMCC today, which covers the AML program’s specific contributions to historic coal communities, current status and future outlook, and the need for reauthorization of AML fee collection authority.

ensure that the RECLAIM Act achieves its goals to that end; and 3) how to ensure that the existing structure and contributions of the AML program are maintained, now and into the future.

Experience with Economic Revitalization Through the AML Program

The state and tribal AML programs have long-standing experience with the economic benefits of AML projects and their importance for AML-impacted communities. The states and tribes also have extensive experience with efforts to enhance those established economic benefits. For much of the life of the SMCRA AML program, economic benefits (often referred to as “general welfare”) were expressly included in the statutorily established “priority” system by which states and Tribes select the most important, worthwhile projects. The 2006 amendments to SMCRA removed “general welfare” as an eligible determinant of project priority, with Congress preferring to focus AML work on sites posing the greatest risk to health, safety, and the environment. With recent downturns in coal production and the resulting economic impacts to historic coalfield communities, particularly those in Appalachia, interest in enhancing economic revitalization through the AML program has become renewed.

Over the past two years, beginning with the Obama Administration’s Abandoned Mine Land Economic Revitalization, or “AMLER” proposal, and more recently with the introduction of Congressman Rogers’ RECLAIM Act (H.R. 4456) in the 114th Congress, NAAML and IMCC have worked to bring the AML program’s unique, first-hand perspective to bear on the development of these AML economic revitalization proposals given the fact that the states will be responsible for the implementation of any new legislation. Throughout that process, our first priority has been to ensure that the proposals are structured to produce their desired effect, are workable within the realities of the process and resources available, and avoid negative impact on the overall progress of AML work. In the regard, NAAML and IMCC are especially appreciative of the attention given to state perspectives by Congressman Rogers and his staff in the development of H.R. 1731 which we believe has resulted in an improved bill. As the Committee considers the bill before us today, we hope that the state and Tribal perspectives shared in this hearing will ensure that its implementation is successful and its important purposes are achieved.

NAAML and IMCC Comments and Recommendations on H.R. 1731

The states’ and tribes’ unique historical circumstances have produced significant variance in their environmental and economic conditions, even within regions. This is particularly true with respect to the severity, type, and distribution of AML sites relative to the states’ and Tribes’ most economically in-need communities. Variance also exists with respect to the relative size of the AML programs, as well as type and availability of AML-related economic opportunity. In consideration of these differences, the key to the success of the RECLAIM Act will likely be the nationwide prevalence and identification of RECLAIM-eligible projects that are both high priority AML sites and ideal potential opportunities for economic revitalization. For RECLAIM to achieve its implementation goals, it will be

imperative to allow the states and tribes the latitude to select projects which will produce the best possible balance of environmental and economic results given their respective circumstances. In practice, this means ensuring that the requirements and direction provided by the bill are structured to avoid overly prescriptive interpretations with respect to eligible uses of RECLAIM funding, which would very likely do more to constrain than to encourage the selection of the most worthwhile, economically beneficial AML projects.

One of the significant changes in the recently introduced version of H.R.1731 as compared to last year's version is that uncertified states will no longer have to meet the conditions set forth in section 416 (c) for priority 1 and 2 projects that are eligible for the enhanced funding available under the bill. Under the previous bill, uncertified states could direct their accelerated funding to high priority projects only if the targeted metrics were met. States like Utah and West Virginia, for example, expressed concern that the make-up and distribution of their AML sites and in-need communities would not sync well with the circumstances anticipated by the previous bill. The less restrictive approach in H.R. 1731 will more appropriately expand opportunities to address the higher priority projects that have traditionally been the focus of the AML program.

By providing a specific community metric (5-year coal job losses) in addition to a more general metric ("historically relied" on coal), H.R.1731 should provide the necessary balance of direction and latitude to the states in their ability to select and design priority 3 projects that best achieve the purposes of the bill in the context of their respective circumstances. If a state can demonstrate that a project's economic impact is reasonably promising, it will be considered to achieve the goals of the RECLAIM Act.

With regard to the bill's requirements for stakeholder collaboration related to the selection of priority 3 projects, there will likely be variances among the states in the prevalence and type of stakeholders and their economic development expertise. However, it should be noted that existing, effective working relationships between AML programs and their interested non-governmental stakeholders are common and that AML projects are generally conceived with assistance from local citizens and watershed groups.

The increase to minimum program state funding provided by the bill evidences the sponsors' commitment to promoting and enhancing the value of AML programs. NAAML and IMCC strongly support this provision and have long-advocated for an increase in the untenably limited annual funding currently available to these states, (which include Alaska, Arkansas, Colorado, Iowa, Kansas, Maryland, Missouri, New Mexico, North Dakota, Oklahoma, Tennessee, Utah, and soon Virginia). SMCRA Title IV designates any uncertified state for which the annual AML grant distribution is less than \$3 million as "minimum program". These states often have very significant AML inventories, but due to low levels of current coal production and comparatively low levels in the years prior to 1977 (which respectively determine a program's "state share" and "historic coal share"), they do not receive adequate annual funding under the current grant distribution formula. SMCRA Title IV requires that OSMRE fund out of the "Secretary's discretionary share" of AML fee collections the amount necessary to bring any minimum program states' annual distribution to at least \$3 million.

However, even the \$3 million mandatory distribution is markedly deficient as compared to the massive AML inventories and costs remaining in these minimum program states, especially considering the significant and sudden costs of AML emergencies. At the current rate, some minimum program states, Kansas for example, have AML inventories for which reclamation would literally take hundreds of years to complete. As it is, these states often must save several years' worth of grant funding simply to fund one major project, which severely compromises their ability to maintain adequately staffed, securely funded AML programs, and significantly stalls progress with their inventories. Therefore, NAAML and IMCC strongly support the increase in minimum program funding to a mandatory annual grant amount of \$5 million. Also, any funding available to the minimum program states pursuant to RECLAIM should be in addition to the \$5 million base for these states.

With regard to Section 6 of the bill regarding the role of the Appalachian Regional Commission in the area of abandoned mine land reclamation and restoration, we urge the sponsors and the Committee to clarify in report language that the funding for this initiative is separate and distinct from and will not impact funding available under Title IV of SMCRA for state and tribal mandatory grants and OSMRE discretionary funding.

Further to the bill's goal of economic revitalization in distressed coal communities, NAAML and IMCC support the set aside of up to 30% of states' RECLAIM funding for Acid Mine Drainage (AMD) accounts. The AML programs must be able to maintain funding available for operation and maintenance of their existing AMD treatment systems. This can be especially difficult for minimum program states given their comparatively low annual grant funding. States should be allowed to set aside as much of their grant funding as possible in order to avoid the grave consequences of allowing existing treatment systems to fail. The significant progress that all AML programs have made in restoring watershed health through AMD treatment systems, along with the vast economic opportunity recovered when an impaired watershed is brought back to life, are rapidly lost when operation and maintenance efforts are defunded. The state of Maryland (a minimum program state), as one example, relies heavily on AMD treatment systems to bolster its rural economies. An excellent study prepared for the Maryland State Water Quality Advisory Board² demonstrates the far-reaching economic impacts of the watershed restoration achieved by AML programs, such as increasing the recreational and industrial uses of rivers. In order to preserve the economic gains represented by these treatment systems, NAAML and IMCC support the AMD set-aside allowance for all uncertified states. This will allow the states to bring the full potential effect of accelerated funding under RECLAIM to bear on their citizens' economic well-being.

² Hansen, Evan, et al. "The benefits of acid mine drainage remediation on the North Branch Potomac River." *Morgantown (WV). Downstream Strategies* (2010).

In the interest of the states' ability to effectively and efficiently implement RECLAIM, NAAMLPL and IMCC are concerned that the project planning and administration allowance of 10% for RECLAIM funding is too low. To ensure that the AML programs are put in a position to succeed with respect to getting their accelerated RECLAIM funding on the ground to their communities in-need, and especially in the enhanced collaborative and creative manner anticipated by the bill, adequate project planning and administration funding is crucial.

The existing state AML programs vary widely in size. Some have large enough programs to benefit from economies of scale and therefore anticipate less concerns with utilizing their accelerated funding. Other states, however, have relatively small AML programs, which are, by necessity, carefully scaled to match the funding resources generally available year-to-year. AML program budgets are planned under the assumption that future funding levels would remain more or less in line with the levels envisioned by the 2006 SMCRA amendments, which of course did not include the acceleration of funding proposed by RECLAIM. These states cannot necessarily afford to hire new staff to contend with sudden but temporary funding increases, especially if they cannot be certain that the AML program will be reauthorized in 2021 and new AML funding generated. States with specifically-scaled, in many cases already strained, AML program budgets will undoubtedly encounter challenges in attempting to utilize unanticipated increases (in some cases 100% of their typical annual funding level) with only a 10% increase in the project planning and administration funding available under RECLAIM. In consideration of these several interconnected concerns with respect to available program implementation resources, NAAMLPL and IMCC strongly recommend that the percentage of RECLAIM funding allowed for project planning and administration be increased to 20%.

We understand that the primary goal of the RECLAIM Act is to accelerate distribution of \$1 billion from the AML Trust Fund, over the course of five years, for high priority AML projects, in addition to those (priority 3) with enhanced economic benefits. The latter projects are to be identified and conducted in cooperation with local economic and community development expertise and focused in communities most in need of economic revitalization. As has been noted, most, if not all AML projects already produce economic benefits and are generally conceived with assistance from local groups. The key difference between the traditional AML program and AML economic revitalization programs such as AMLER and the prior version of RECLAIM, is that potential economic benefits become a primary determining factor in prioritizing and selecting projects in addition to the generally relied upon factors of the sites' relative danger to public health, safety, and the environment.

While the economic opportunities that stem from AML projects are major benefits of the program, the AML program's core mission remains the protection and restoration of historic coalfield citizen's health, safety, and environment. The most basic source of concern for the state AML programs regarding economic revitalization proposals has been the potential for shifting a very significant amount of limited AML funding away from the highest priority health and safety issues. To the extent that a

tradeoff exists between enhancement of economic benefits stemming from those projects and accomplishing high priority reclamation, the policymakers who designed this program, as well as the states who will implement it in turn, must balance the economic goals of RECLAIM with the fundamental health, safety, and environmental goals of the AML program. In finding that balance, NAAML and IMCC recommend caution in shifting priorities away from traditional AML reclamation.

We therefore support the provision limiting eligible uses of RECLAIM funding to AML design and construction activities for Section 403 priority eligible AML sites, which should ensure that the AML Trust Fund resources accelerated by RECLAIM are focused only toward genuine AML priorities. We also support the provision that RECLAIM-funded projects on “priority 1” or “priority 2” sites (which represent the highest levels of danger to public health and safety) need not engage in additional economic development justification. These provisions represent a prudent commitment to maintaining the existing contributions of the AML program and should help mitigate any unintended impacts on the overall allocation of the AML Trust Fund. The progress achieved by each state with an approved AML program on sites posing the most severe and imminent dangers to public health and safety is already a fundamental contribution to the economic revitalization of their historical coalfield communities.

As the administrator of a certified state program, I would like to offer a few comments based on my specific experience. It is important to note that all SMCRA AML programs, uncertified and certified alike, are engaged in ongoing high priority coal reclamation. It is simply in the nature of AML sites and inventorying efforts that additional coal AML sites will continue to manifest and that known, once lower-priority will continue to degrade, each resulting in additional coal AML costs, including for certified states and tribes. OSMRE data shows that certified states and tribes have addressed at least \$61 million in high priority coal problems in the past 5 years. The state of Montana’s inventory of remaining coal AML costs currently sits at \$127 million.³ As with the vast majority of AML-impacted states and tribes, the remaining AML funding available (or which is currently expected to be available) to Montana will not be sufficient to complete remaining AML work. The state of Montana therefore joins our fellow state and tribal AML programs in recommending that continued progress with high priority reclamation be considered an utmost priority.

Conclusion

Overall, H.R. 1731 seems decidedly structured such that states should be able to utilize their RECLAIM funding effectively within the terms of the bill, which is noted and appreciated by NAAML and IMCC. We believe that the consideration given to states’ and Tribes’ ability to implement this program in the context of the existing structure of the AML programs will do much to ensure that the ongoing contribution of the AML program is not

³ This figure is based on the state of Montana’s own inventory database, which is more sophisticated than the national inventory (E-AMLIS) maintained by OSMRE.

compromised, and that the RECLAIM Act does not unintentionally detract from its own goals as a result.

If, however, the concerns outlined above with respect to interpretation of certain terms and concepts are not resolved, and necessary considerations and assurances are not made to secure both effective implementation of RECLAIM and the long-term future of the AML program, the states face the risk of diminishing the overall value of their remaining AML funding resources. Additionally, due to the reallocation provisions, some states could actually lose out entirely on some portion of the funding they and their citizens are otherwise anticipating under SMCRA. NAAML and IMCC look forward to our continued working relationship with the Committee and the bill's sponsors to ensure the RECLAIM Act achieves its best effect possible.

It may be that a rulemaking for the purpose of specifically defining certain new terms and concepts in the context of Title IV of SMCRA is desirable or necessary following enactment of the bill. Regardless, in order to ensure that the bill accommodates state concerns articulated above, we suggest the addition of report language to outline more specifically the committee's intent and expectations. NAAML and IMCC would be happy to work with the Committee in the development of appropriate report language in conjunction with a markup of the bill.

The RECLAIM Act's proposal to enhance the AML program's economic benefits holds promise, that much is clear. What is less clear is the impact RECLAIM might have on the long-term future of the AML program. NAAML and IMCC's next witness will provide further detail on the many-faceted contributions of the AML program on the well-being of historical coal communities and the outlook for the program's future. The fact is: the funding which is currently available and is expected to be collected between now and the end of 2021 is only a fraction of what is needed to complete the AML program's mission, including the very same economic impacts sought by the RECLAIM Act. If we are to revitalize the economies of coal country, we must reauthorize the AML program as well.