Statement of Susan Kozak, Director, Soil Conservation and Water Quality Division, Iowa Department of Agriculture and Land Stewardship on behalf the National Association of Abandoned Mine Land Programs (NAAMLP) Re. a Hearing on "Restoring Abandoned Mine Lands, Local Economies, and the Environment" before the House Subcommittee on Energy and Mineral Resources – March 18, 2021

Introduction

Good afternoon Mr. Chairman and Members of the Committee. My name is Susan Kozak and I serve as Director of the Division of Soil Conservation and Water Quality within the Iowa Department of Agriculture and Land Stewardship. I am appearing today on behalf of the National Association of Abandoned Mine Land Programs (NAAMLP), for which I serve as President.

NAAMLP is a national organization that represents the abandoned mine land and environmental protection interests of its 29 member states and three Indian Tribes. As State and Tribal agencies with primary responsibility for implementing the Abandoned Mine Land (AML) Program under Title IV of the Surface Mining Control and Reclamation Act (SMCRA) within their respective borders, we appreciate the opportunity to appear before the Subcommittee to discuss the critical AML bills it is considering today. My testimony will focus primarily on H.R.1734, the Surface Mining Control and Reclamation Act Amendments of 2021, introduced by Representatives Cartwright and Thompson. It should be noted that NAAMLP endorses the testimony being provided by my colleague John Stefanko of Pennsylvania on behalf of the Interstate Mining Compact Commission, with whom we work closely.

As the 117th Congress commences, the SMCRA AML Program approaches a significant crossroads. SMCRA provides AML-impacted States and Tribes the resources and authority they need to counteract the massive and costly coal AML problems within their borders; but the AML fee on which the program relies is set to expire in September. This funding is critically important in protecting and restoring the health and safety of coalfield citizens and their environment. In an era of increasing economic hardship for coalfield communities throughout the country, the State and Tribal AML programs' work has become more important than ever.

While significant progress has been made since the passage of SMCRA in 1977, much remains to be done. The AML funding currently available to the States and Tribes is limited, and with the need to reauthorize the AML fee just a few months away, the future of the entire AML Program is unclear. NAAMLP intends for this testimony to illuminate the history of and current circumstances surrounding coal AML work under SMCRA. It is our hope that by bringing the States' and Tribes' experience to bear and equipping Congress with the information it needs, the AML program and its multi-faceted benefits can be maintained and promoted now and into the future.

Progress with AML Work

Throughout our Country's early history and up until the passage of SMCRA in 1977, coal mining was not regulated at the federal level. As a result, some coal mining operations were left inadequately reclaimed – particularly prior to modern advancements in responsible mining techniques and the adoption of robust State, Tribal and Federal regulatory programs. Legacy coal mining sites spanning over two hundred years of our country's history have enduring impacts today; but because the mining occurred so long ago and the coal companies that conducted that mining are long since defunct, no known entity exists with reclamation obligations for these sites under any State, Tribal or Federal law. Put simply: abandoned mines are everyone's problem but no one's responsibility.

Over the forty years since the passage of SMCRA, the AML fee paid by the modern coal mining industry has made a significant contribution in enabling the State and Tribal AML programs to address the impacts of past mining. As the AML inventory clearly shows, a truly significant amount of AML work has been accomplished through the AML fee, but the resources and time provided to the State and Tribal AML programs so far in SMCRA's first forty years do not approach the scale of the two-centuries-in-the-making coal AML problem.

Since the first AML grants were provided to the States and Tribes in the early 1980's, the AML programs have worked to address AML-related public health and safety hazards such as mine fires, mine subsidence, dangerous highwalls, and open shafts and portals, and to remediate the environmental impacts of AML sites, including acid mine drainage (AMD), surface and ground water contamination, erosion, sedimentation, and inadequate revegetation.

In the course of that work, the equivalent of over 896,000 acres have been reclaimed; that's more acreage than is contained in Yosemite National Park or nearly 20 times the footprint of Washington, D.C. According to a recent report obtained from the federal Office of Surface Mining Reclamation and Enforcement's (OSMRE) online Abandoned Mine Land Inventory System (E-AMLIS[1]), approximately $6 billion has been spent on construction, design, planning and management for these projects. Even with this tremendous accomplishment, approximately 839,000 acres of high-priority AML sites remain.

The most common types of high priority AML health and safety projects are dangerous highwalls, mine voids, and subsidence events. Highwalls, the most prominent remnant of abandoned surface mines, are vertical, cliff-like rock faces created as the surface is excavated. These hazards cause deaths and injuries each year, generally as a result of falling from the highwall or being struck with falling debris. To date, the AML Program has reclaimed more than 990 miles of dangerous highwall at a cost of $708.7million.

Mine voids and subsidence events are the hidden danger that remains from the vast legacy of underground mining throughout the country. Collapse of the unsupported

[1] www.osmre.gov/programs/AMLIS.shtm

underground voids results in openings or depressions that form at the surface and buckle streets and sidewalks and damage or destroy homes or other structures built above the mine. A recent GIS analysis done in Allegheny County, Pennsylvania found that there were 537,668 buildings within the county boundary, of which, 229,025 buildings (42.6%) are at risk of mine subsidence due to their location over confirmed underground mining sites. In the City of Pittsburgh alone, there are 114,517 buildings within the city boundary, of which, 41,841 buildings (36.5%) are at risk of mine subsidence. These "hidden" dangers are often un-inventoried until a problem emerges, at which point they become either an AML emergency project or a "new" high priority site. To date the AML Program has reclaimed more than 10,000 acres of subsidence areas at a cost of $601.7 million.

At the end of federal fiscal year 2020 E-AMLIS indicates that the estimated cost to reclaim all of the highest priority health and safety hazards (Priority 1 and Priority 2) exceeds $8.1 billion.

The States and Tribes also engage in a significant amount of important "priority 3" work – which is generally defined to include any environmentally impacted site without a particularly high risk to public health and safety, such as water bodies with pH at such low levels that the water is not safe to drink and may kill aquatic species. The prime example of this type of work is the many mine drainage treatment facilities (both active chemical treatment plants and passive mine drainage treatment systems) constructed by the States and Tribes. These systems treat mine drainage discharges and are significantly improving water quality in hundreds of miles of streams throughout the country. All of these treatment facilities rely on AML funds to some degree for continued operation, monitoring, and maintenance. Without that support, the substantial environmental gains these systems represent would be lost.

If priority 3 sites are included in the estimate of remaining AML costs, the current inventory of known AML problems sits at over $10.8 billion – which would likely be significantly higher were the full long-term costs of AMD water treatment accurately reflected in the inventory.

The Role and Contributions of the State and Tribal AML Programs

The AML program is a vital component of the balance between natural resource production and environmental protection and restoration established by Congress through the passage of SMCRA. Under the state-led, cooperative federalism approach embodied in SMCRA, the States and Tribes exercise primary responsibility for identification, monitoring, and restoration of coal abandoned mined lands.

The coal mined in historic coalfields over the past two hundred years fueled the development of our country. Now, the coal mining communities that supported the nation through industrialization are prevented from fully taking part in the American economic prosperity they did so much to bring about, in significant part due to the drag on economic development caused by the health, safety, and environmental AML hazards

that pervade their communities. The SMCRA AML Program plays a vital role in efforts to correct those circumstances and restore the well-being of AML-impacted communities.

While the State and Tribal AML programs' primary mission is reclamation, their work has other far-reaching benefits, some of which are not always obvious based on how progress under Title IV is reported. Abandoned mine lands not only threaten impacted communities' lives, health, and environment, but also their economic futures. The AML Program has proven its extensive economic benefits over its now 40-year history. These benefits are most directly realized by removing obstacles to and creating opportunities for economic development, but funding for State and Tribal AML programs also supports thousands of direct and indirect jobs. AML projects often employ former mine operators themselves and who in turn employ many former miners and other local workers from our coalfield communities. Additionally, beyond construction jobs, AML projects often require engineers, surveyors, mechanics, fuel for construction machinery and raw materials for reclamation. The AML programs' efforts in restoring mining-impacted lands and waters to productive uses provide fundamental contributions to establishing the basic conditions needed for AML-impacted communities to thrive and create further employment and other economic opportunities.

According to a report completed in 2015 by the Appalachian Citizen's Law Center, "In FY2013, the AML program made a total economic impact of $778 million, a net impact of $450 million on US GDP, and supported 4,761 jobs through AML reclamation work. Central Appalachian states saw a total economic impact of $182 million, a value-added impact of $102 million, and 1,317 jobs supported by the AML Program. As demonstrated by a national FY2013 value-added (net) impact of nearly half a billion dollars, the program delivers a substantial contribution to the American economy on an annual basis. For its environmental and economic impacts, the AML Program demonstrates a forty-year long, highly successful proof of concept and is absolutely crucial to the future of coalfield communities in the United States."[2]

The AML Program provides a significant public service beyond reclamation accomplishments and economic benefits. These programs stand ready to receive calls from the public whenever any manner of potential AML problem rises to the point that action must be taken to protect public health and safety or restore the environment from the effects of past coal mining. Communities among prevalent abandoned mines live in constant worry of sudden devastating impacts – and the AML program helps to bring to these communities the security and peace of mind they deserve.

In this regard, one of the AML Programs' most important functions is to address AML emergencies. These suddenly-occurring problems pose an extreme danger to our citizen's health, safety and general welfare and may involve mine subsidence that damages homes, roads, utilities, or other improved property; burning coal refuse or underground mine fires; mine shafts and portals which have become accessible to the

[2] Dixon, Eric and Kendall Bilbrey, Abandoned Mine Land Program: A Policy Analysis for Central Appalachia and the Nation. Report: AML Policy Priorities Group, Appalachian Citizens' Law Center, The Alliance for Appalachia. 8 July 2015.

public; dangerous mine gas migration into homes; mine water blow outs and other mine drainage problems; or landslides.

In West Virginia over the past five years, the emergency program has investigated 2,638 complaints and abated 188 emergencies at a cost exceeding $25 million. An example is the Rockhouse Creek (Pack) Burning Refuse located in Logan County. Located within the Hatfield McCoy ATV Trail system, this refuse fire produced smoke and noxious fumes in addition to burning subsurface voids subject to collapse. The site posed a significant danger to users of the trail system, as subsurface portions of the burning refuse appeared stable and inviting to trail riders. All burning material was excavated and extinguished at a cost of $1,347,959.

In Colorado over the past few years, the AML program has responded to numerous emergencies ranging from subsidence features in someone's driveway to wildfire ignition from underground mine fires. One such example, was the Streeter Mine Fire emergency that the Program responded to in 2020. It is believed that extremely hot surface temperatures associated with a long burning underground mine fire ignited surface vegetation resulting in a wildfire that raced across over 1000 acres threatening an active coal mine, knocking out power and closing a Colorado highway. The Program responded by mobilizing equipment to control burning coal by mixing it with water and soil at the ignition location and assisted local first responders in fire containment. The response cost for the Program exceeded $50,000, but the response cost to other agencies and damages as a result of the emergency were significantly higher. These types of mine fire related emergencies have become increasingly common in Colorado's drier climate, and over the last two years have totaled over $200,000.

The AML programs also provide a key contribution in the form of water line extension projects. The States and Tribes often utilize Title IV SMCRA funding to provide potable water to communities that have lost or had their water sources polluted due to pre-SMCRA mining operations. As an example, since 2015, the West Virginia AML program has completed 38 waterline projects. These projects have provided 2,319 household water hookups at a cost of nearly $73 million. An additional 8 such projects have been approved for funding, which, once complete, will supply potable water to an additional 189 West Virginia residents at a cost of $48 million. AML is often the only funding source that can provide potable water despite the high cost per house associated with waterline construction in Appalachia.

It should also be noted that SMCRA Title IV designates a State program for which the annual AML grant distribution is less than $3 million as a "minimum program". OSMRE is required to make up the difference between what a State receives from its 50% of AML fees and any historic production share and the statutory minimum distribution of $3 million. There are currently 13 minimum programs across the country, including my home state of Iowa. This $3 million distribution was set over a decade ago and, due to inflation, is currently insufficient to address the remaining AML hazards in these States. For this reason, NAAMLP believes the minimum program distribution should be increased to $5 million annually, as set forth in H.R. 1734.

At the current rate of $3 million annually, it will take over 100 years for some minimum program States to address their inventory of AML sites. As an example, Iowa had a relatively large AML project a few years ago (the Logan site) for which the engineers determined the reclamation work would expend about 80% of Iowa's annual construction budget. Given these types of costs, Iowa is only able to reclaim one to three sites per year. With approximately 200 sites left on our inventory, it would take over 60 years to address them all.

Another important impact on the strained budgets of minimum program States is emergencies. By definition, these are sudden, unpredictable events and thus it is impossible to know when, where or how many emergencies will occur each year. Prior to 2010, OSMRE covered the costs of addressing these emergencies but now the funding must come from annual State AML grants. It is not unusual for minimum program states to use a majority of their $3 million annual grant for these emergencies, thereby precluding their ability to tackle regular AML projects.

With the need for reauthorization of the AML fee looming, the time has come once again to engage in an examination of circumstances surrounding the SMCRA AML programs. To provide the needed context for that effort, it is useful to examine the most recent reauthorization effort in 2006.

Recent Funding History

The fee collection authority contained in SMCRA was last reauthorized in 2006 for a 15-year period extending to September 30, 2021. The 2006 SMCRA amendments, which took over 10 years to complete, exhaustively considered the most effective, equitable way for AML funding to be apportioned. This effort established the understanding that each of the approved AML program States and Tribes have communities whose health and livelihoods are compromised by the effects of AML sites, and that each of these States and Tribes and their respective AML-impacted communities deserve fairly apportioned funding.

Leading up to 2006, projections developed by OSMRE showed that most States would complete reclamation of their high-priority coal AML during the reauthorization period[3]. Unfortunately, those projections have not been fully realized for a variety of reasons, including: significantly less grant funding for the largest AML programs than was anticipated due to decreasing coal production; the allocation of funding toward AML emergencies; sequestration of AML funds; and growth of the AML inventory through identification of additional AML features. The programmatic effects of less-than-

[3] When a State or Tribe has completed its highest priority coal AML work, it is allowed to "certify" under SMCRA. These certified programs continue to address emergencies and other newly manifesting coal problems, operating and maintaining existing projects, and conducting much-needed noncoal AML work. Following certification, Title IV grants for these States and Tribes come from the General Treasury, rather than AML fee receipts, meaning significantly increased AML funding for remaining uncertified States through a reallocation mechanism.

expected AML grant funding are exacerbated by reductions in severance tax and other coal production revenue, on which many States and Tribes rely to a significant extent to support both regulatory and AML program costs.

For instance, the State of West Virginia's P1/P2 inventory in 2006 was approximately $735 million and OSMRE projected that WV would receive approximately $987 million through 2022. To date and based on current OSMRE projections, the State is on track to realize approximately $592 million including a reduction of approximately $25 million due to sequestration. Although significant reclamation work has been completed by West Virginia's AML program, OSMRE reports that the State's inventory currently stands at $1.37 billion. OSMRE unilaterally removed (or "scrubbed") many sites from West Virginia's E-AMLIS inventory, especially during the 1990's – many of which have in fact proven to be high priority AML sites. West Virginia's own, more accurate and inclusive inventory of its remaining AML sites indicates that the total remaining cost is closer to $3.6 billion.

Similarly, for Pennsylvania, the largest AML Program, its P1/P2 inventory in 2006 was approximately $1.003 billion and OSMRE projected that Pennsylvania would receive approximately $1.365 billion through 2022. To date and based on current OSMRE projections, Pennsylvania is on track to realize approximately $675 million, including a reduction of approximately $30 million due to sequestration. That is a full 50% reduction in AML funding compared to OSMRE's original projections in 2006. Meanwhile, OSMRE reports that, in Pennsylvania alone, nearly $5 billion in priority 1, 2, and 3 AML sites remain.

For the AML program taken as a whole, the actual amount received to date by the States and Tribes is $4.14 billion as compared to $5.55 billion initially projected in 2006.

Compounding this issue, the projections for the completion of AML work in 2006 did not fully consider the dynamic and expanding nature of the AML inventory. With advancements in technology, the collection of more complete maps and mining records, the development and expansion of nearby communities into AML areas, and increased awareness and identifications of these sites by local residents, many additional AML hazards have been identified and added to the AML inventory in the intervening time since 2006. There are several other ways that the AML inventory can be misunderstood, which are discussed in the following section.

The AML Inventory

E-AMLIS is the primary means for Congress and the public to view progress with AML work, but the figures generally do not reflect the true size and severity of the remaining problems. The inventory generally only reflects direct *construction* costs and does not accurately reflect several other ways that the States and Tribes are authorized to utilize their precious grant funding to combat AML. The issue here is not whether the "non-construction" portion of funding is accounted for or whether it is necessary to operate a successful AML program; as will be explained below, it is certainly both. The

issue is simply how this information tends to be reported through the federal inventory, and how the operation of the AML programs is understood as a result.

The E-AMLIS was created primarily to aid OSMRE and the States and Tribes in tracking reclamation accomplishments, especially of high priority health and safety hazards. E-AMLIS serves this purpose adequately, but was not intended to and is certainly not structured to present a perfectly accurate picture of remaining AML costs or of the various ways that AML grant funding is spent by the States and Tribes. It is important to note however that all AML grant expenditures are diligently tracked by the AML programs and reported to OSMRE on an annual basis pursuant to SMCRA regulations and policies.

The primary misconception caused by E-AMLIS relates to the realities of AML inventorying efforts. Contrary to popular belief, the AML inventory is not static. It is simply in the nature of AML that previously uncatalogued hazards will continue to manifest (particularly those associated with abandoned underground mines) and that known sites will continue to degrade, both of which increase the costs to complete AML work.

As communities in AML-impacted regions expand outward, once isolated AML sites become higher priority as the danger they pose to public health and safety increases. What's more, because it isn't cost-effective to routinely update entries for pending AML projects, many of the project cost estimates listed in the inventory do not reflect current costs (for example, they often do not include inflation). As remaining unreclaimed AML sites are periodically surveyed, cost estimates will therefore generally increase.

While estimates of total remaining costs may not be perfectly accurate and are subject to change for the reasons explained above, the inventory *does* adequately demonstrate that total remaining AML costs are massive, and far exceed the amounts which have been or will be appropriated through the SMCRA AML program. From the States' and Tribes' point of view, remaining costs are high enough that, in terms of dollars that could be spent to update or improve the inventory, total accuracy is generally less important than furthering actual reclamation work.

E-AMLIS also does not present a complete picture of how the States and Tribes utilize their AML funding. There are several key activities to which AML grants are necessarily directed as the AML programs complete standard projects and fulfill other responsibilities that are not obviously reflected in E-AMLIS. The most notable are the significant non-construction costs associated with AML work which are required in the course of running an AML program. These include: site investigation and surveying, compliance and permitting needs, design and engineering work, and project management. All of these are critical to the successful completion of an AML project. And while these costs are not included in E-AMLIS, they are tracked through the AML programs' annual grant reports, through which every dollar of AML grant funding is carefully accounted for.

Another critical element is administrative overhead – but this represents a relatively small portion of the grant activities that are not well-reflected in E-AMLIS. Grant-funded government programs often must utilize a certain percentage of funding for administrative needs like staffing their programs, and the AML program is no different, though the AML programs tend to be relatively small and streamlined compared to others. Administrative costs are overseen by OSMRE and are well accounted for and in line with federal requirements. The State and Tribal AML programs have endeavored to maintain efficiency and comply with Congressional direction regarding the operation of their programs, and the record will demonstrate that the AML programs have been excellent stewards of their Title IV grant funding. In general, administrative expenses do not exceed 15% of a total grant expenditure across all State and Tribal AML programs – and most are in the 7% range.

A short summary of how AML projects are handled by the States and Tribes may be instructive. The first step in completing an AML project is identifying and gathering information on the prospective site. The AML programs are required to perform a site inventory to account for the size, scope, and estimated costs of a given project, then enter that preliminary information into E-AMLIS. Per SMCRA regulations, the cost estimate provided at this point only includes the *estimated construction costs* for the project and not the design and permitting work necessary prior to the start of construction.

Completion of an AML project requires compliance with a full slate of environmental laws as well as multiple state and federal agency consultations. The National Environmental Policy Act (NEPA) requires that the AML programs consult with jurisdictional state and federal agencies to determine and document the project's anticipated impact on environmental and cultural resources and to develop mitigation plans for those impacts. All of these consultation and permitting activities require the attention of AML staff with certain technical expertise.

The development of project plans and specifications also requires significant AML program resources and staff time. This includes surveying and mapping the site, conducting water and soil sampling, and engineering the actual design of the AML project. During this process and subsequent to it, another round of review and permitting is conducted by multiple state and federal agencies and necessary permits are obtained.

After the design plans are completed and approved, the bidding and procurement process for the AML contractor who will actually complete the construction of the project begins. This work must be carefully timed due to limited construction seasons as a result of climate and other environmental considerations, such as sensitivity of Indiana Bat habitat. For these reasons and due to the sheer size of some projects, they may in some cases take several years to complete. The State or Tribe will expend staff time during construction to ensure the contractor adheres to the contract specifications.

Each step in this process as described requires AML staff time and grant resources. While each of these non-construction activities are necessary to the AML programs' work and could not, nor should be, avoided, it is important to note that the vast

majority of AML grant funding is dedicated to actual AML construction costs, as the inventory indicates. For example, West Virginia has received a total of $1.08 billion since it received its first AML grant in 1981. Of that amount, approximately $803 million has been spent purely on construction.

Even among construction-dedicated AML grant funding, there are several ways that the AML programs are authorized to utilize this funding. Some of these activities (including emergency projects, AML future set-aside, Acid Mine Drainage (AMD) set-aside, and hardrock AML projects) are not reflected in OSMRE Inventory reports because they are not tracked the same as Priority 1, 2, and 3 coal projects. More detailed information on these activities follows.

Addressing AML emergencies is a key function of the AML programs, but because these sites are often not previously listed in E-AMLIS, they are sometimes not reflected the same as standard high priority projects when completed. Moneys directed toward emergency projects by the States and Tribes are accounted for in a distinct portion of E-AMLIS, but are generally not included when OSMRE reports on AML progress through E-AMLIS.

In certain cases, Title IV AML grants are eligible to be expended on the completion of high priority non-coal or "hardrock" projects, e.g. the reclamation of an abandoned uranium mine.[4] Much like AML emergencies, E-AMLIS does not track the inventory of non-coal AML projects, so AML moneys directed toward such projects may not be reflected in the Un-funded, Funded, or Completed P1and P2 portions of E-AMLIS – which are the areas generally reported by OSMRE. AML moneys directed toward noncoal projects are however (like AML emergencies) tracked as a distinct non-coal portion of E-AMLIS.

Prior to the 2006 amendments to SMCRA, States and Tribes were given the opportunity to set aside a certain percentage of their annual AML grants for future use. Many States rely on these future set-aside accounts for timely completion of AML emergencies, such as unexpected subsidence events. AML moneys deposited in future AML set-aside accounts are not accounted for by E-AMLIS until those moneys are actually spent.

SMCRA provides that State and Tribal AML programs may designate a certain percentage of their annual AML grants for application to acid mine drainage (AMD) water treatment projects. Such projects require long-term treatment, for which annual AML grant funding is not otherwise available. The AMD set-aside accounts are intended to provide the opportunity for funding this type of longer-term treatment. These set-aside accounts are not accounted for by E-AMLIS until those moneys are actually spent on completion or treatment of a certain AMD project. E-AMLIS also does not reflect

[4] In the absence of a national hardrock AML program, the limited but steady progress that the certified States and Tribes are making with high danger hardrock AML sites is crucial. These sites are just as dangerous as coal AML sites, and especially in the case of emergencies, are justifiably dealt with at the same priority level as comparable coal AML sites where a State or Tribe has earned that ability by achieving certification.

expenditures to operate and maintain treatment systems when the AMD program began in 1993 through 2012; Pennsylvania, for example, spent millions to operate AMD systems during that period.

The key takeaway here is that the inventory does not demonstrate the true progress the AML programs have made or the true size and severity of the problems that remain – but it *does* serve its primary purpose of indicating how much reclamation construction work has been accomplished. The inventory distinctly shows that to finish the AML programs' work, more time and more funding is necessary. As the course for the future of the AML program is determined, it is critical to understand what the inventory really shows and what it demonstrates about the outlook for the program's future.

Outlook for the SMCRA AML Program

As the course for the AML programs' future is determined, the main priority must be to ensure the States and Tribes are equipped with the resources necessary to complete their mission. The progress made by the States and Tribes in reclaiming their respective inventories has been substantial, but maintaining consistent, adequate funding has been a perennial struggle. As discussed above, projections for future funding have not always come to fruition. From the current vantage point, there are a number of developing circumstances that must be considered as new projections for the future of AML funding are investigated.

One recent development of particular note is an increased focus on economic revitalization in the coalfields. In an effort to explore this potential, Congress began appropriating general Treasury funds in Fiscal Year 2016 to a handful of Appalachian States (and later, three Tribes) to facilitate sustainable economic development in distressed communities, including the generation of jobs beyond coal mining. To date, approximately $650 million has been appropriated for the AML Reclamation (AMLER) Pilot Program and reports about progress can be found at OSMRE's website (https://www.osmre.gov/resources/grants.shtm). The States and Tribes that have participated in the AMLER Program have learned valuable lessons about several key components including the type and nature of potential projects; outreach to and coordination with local citizen groups and local government and economic development authorities; interaction with OSMRE regarding vetting and approval of projects; and demonstrating success. All of these experiences will help to inform the affected parties about how a broader-based initiative, such as that proposed by the RECLAIM Act (H.R. 1733), can and should be implemented.

Another concern to keep in mind with a new program like RECLAIM is the added complexity that comes with implementing such a program. Given the statutory requirements set forth in RECLAIM, a rulemaking by OSMRE will most certainly be necessary to lay out the processes and procedures attending the law. This was true following the 2006 amendments to SMCRA and the promulgation process took almost two years. Under the new law, there will be new grant qualification requirements, new

notice and hearing requirements, new grant administration protocols (including tracking of RECLAIM expenditures) and a new congressional study. An expanded program that provides enhanced and increased funding, while at the same time setting forth restrictions on how and when that money must be spent, will likely require additional AML program staff time. However, given state government employment protocols, it may not be feasible to hire additional staff personnel to implement all of these requirements, which in turn could constrain the States' and Tribes' ability to comply with the timelines under the law, thereby impacting future allocations of RECLAIM money.

While H.R. 1733, like AMLER, is a promising initiative in terms of enhancing the AML program's benefits, it is important to understand the effect the legislation would have in changing relative funding levels under Title IV of SMCRA and thereby reducing the amount of funding available to the uncertified AML programs as a whole post-2021 (without fee reauthorization). Drawing $1 billion from the unappropriated balance (essentially repurposing funds Congress dedicated to traditional AML funding) will have a game-changing impact on the Program's post-2021 course as envisioned by Congress in 2006. That funding would otherwise be distributed to the uncertified States at constant annual rates following the end of fee collection authority, allowing these States to continue progress and maintain key functions like addressing AML emergencies and operating water treatment systems. Various estimates suggest that RECLAIM would effectively reduce the life of the Program by 9 to 12 years. From the AML programs' perspectives, any major AML-policy initiative, with H.R. 1733 being no exception, must therefore be very carefully considered in the context of the paramount need for reauthorization.

Beyond potential impacts from pending legislation, the most notable and concerning development surrounding AML work is falling coal production. As coal production declines, receipts from the AML fee leveraged on each ton of coal mined decline in equal measure, which in turn reduces AML grant funding available to the States and Tribes. To the extent that reduced coal production is expected to continue, a looming funding crisis for the AML programs is apparent. The decline in AML fee receipts has already affected every State and Tribal AML program, but the effects are most pronounced in Appalachia, where AML inventories are most substantial.

Even if coal production stabilizes, funding currently available or which would become available based on the Program's current end date (without reauthorization) would not be enough to complete the AML Program's mission of restoring communities impacted by AML. It will be incumbent on AML policymakers throughout the country to realign the future of the AML Program with the new reality of coal's lesser share in energy production. Finding ways to compensate for declines in AML funding and maintain adequate, consistent funding into the future will require innovative thinking and effective cooperation. Most of all, success will require recognition of the AML Program's enduring importance and the amount of much-needed AML work that remains.

Whatever the future holds, the preservation and continuation of the AML programs and their many contributions to public welfare in historical coal communities

cannot be sustained without the AML fee. NAAMLP therefore recommends that the long-term continuation of the AML program be considered an utmost priority.

The Need for Reauthorization

Reauthorization of SMCRA Title IV fee collection authority is a top AML legislative priority for States and Tribes (see attached NAAMLP resolution). In essence, to extend the AML fee is to extend the AML Program itself. As expiration of Title IV fee collection authority approaches, there are many issues yet to be resolved, but one thing is abundantly clear: while the AML programs have made great progress, the remaining AML work far outweighs the resources available.

OSMRE projects that $10.8 billion in construction costs for priority 1, 2, and 3 AML sites remain nationwide. Based on expected AML fee collections between now and the end of 2021, and the amounts currently remaining in the AML Fund (assuming the RECLAIM Act is not enacted), OSMRE projects that $2.33billion in AML grants will be distributed to the States and Tribes in total over the remaining life of the Program as currently positioned. That amount represents only 21%of what is needed - and means that without reauthorization of the AML fee, over $8 billion in construction costs[5] for AML-impacted lands and waters will remain.

Without reauthorization, an unacceptable amount of AML work will remain undone. Mine hazards will fester and unforeseen AML emergencies will continue to occur, risking property damage, injury, and death for local citizens. The deep environmental impacts and visible scars on the lands and watersheds so loved by citizens of and visitors to historic coal country will go unrepaired. Mine drainage treatment systems serving to restore the quality of water resources in mine drainage impacted watersheds will go defunct without funding for operation and maintenance. In many cases, the advances already made in restoration would be lost. If AML fee collection authority is allowed to lapse, when limited remaining AML funds are depleted, there would likely be no other available source of assistance with regard to these vital activities.

Historically, reauthorization has been the most appropriate time to consider potential changes to the program's design and implementation. NAAMLP has recommended policy priorities for reauthorization of the AML fee and a few beneficial modifications to the Program (for example, returning sequestered moneys and increased funding for minimum program States[6]). The attached NAAMLP resolution detail the States' and Tribes' recommendations for the Program's future and many of them are contained in H.R. 1734. Overall, NAAMLP member States and Tribes agree that the

[5] Taking into consideration the additional non-construction costs necessary to plan and design these projects and the currently unaccounted for impact of annual inflation, the funding shortfall is much wider. If the AML programs are to complete their work, reauthorization of the AML fee will be necessary.
[6] Despite their comparatively low AML funding, these States often have massive AML inventories. In Kansas for example, completing reclamation work would literally over 100 years at the current funding rate.

current structure of the AML Program is working well – our main priority is to ensure its continued viability.

Conclusion

We appreciate the Committee's attention to this important Program and to the States' and Tribes' perspectives. The SMCRA AML Program demonstrates Congress' dedication to improving and protecting the welfare of historic coalfield communities; and it represents the meaningful progress that can be achieved through partnerships between Federal, Tribal, and State Agencies, industry, and environmental and citizen advocacy groups. As we work together to further progress with AML work, it must be kept in mind that losing the AML fee will be a significant, perhaps insurmountable setback. The AML Program can help to establish the fundamental stability that historic coalfield communities need to thrive and to restore coal country's bright economic future - but to get there, we must all remain committed to securing a future for the AML Program.