

WRITTEN TESTIMONY OF DON NEWTON
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BEFORE
THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
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Good morning, Chairman Manchin, Ranking Member Barrasso, and members of the Committee. My name is Don Newton and I am the Administrator of the Wyoming Abandoned Mine Land (AML) Division. Thank you for providing the State of Wyoming the opportunity to share our perspective on the Wyoming Abandoned Mine Lands (AML) program.

DEQ's mission is to "protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations." The AML Division addresses these principles through reclamation of historic abandoned mines and assistance to historic mining communities to eliminate public health and safety hazards and address the challenges presented by historic mining.

The AML Division in Wyoming provides real benefits to the state. This includes the mitigation of hazards while creating jobs and associated economic benefits for communities near AML sites that face their own economic challenges as coal production continues to decline. Since its inception, Wyoming AML has reclaimed over 25,000 acres and closed more than 2,500 mine openings. Between 500 – 800 people are employed in Wyoming through AML reclamation projects annually. These projects also provide an economic benefit to communities surrounding those projects through the purchase of such things as fuel and other necessary project materials. The jobs and economic benefits are important since many of those communities are small and feeling the economic downturn resulting from the reduction, or loss, of coal production that their local economies were built around.

The reauthorization of the AML funding passed by Congress in November 2021 reduced the AML fee on produced coal by 20% and continued the fee for an additional thirteen years, until 2034. However, the Bipartisan Infrastructure Law (BIL) added new funding to the AML Trust Fund to address legacy abandoned coal mines and their associated health, safety, and environmental risks. The distribution of those funds to the AML States was predicated on the "Historic Coal Share" which is the ranking of states by volume of coal produced prior to 1977. This distribution formula recognized that some states, such as Appalachia, still have the most unmitigated abandoned coal mines and associated pollution problems. The distribution also recognized that even those states with smaller inventories still have pressing needs that must be addressed. Wyoming concurred with the decision to use the Historic Coal Share as it addressed the remaining needs of all states.

For Wyoming the additional funding offset the reduction in the AML fee, so the total funding is about the same amount that was received in recent years, reflecting the reduced coal production from the peak in 2008. Wyoming AML appreciates the additional funding which keeps our program whole and able to continue critical AML mitigation efforts. The reauthorization of the AML fee combined with the infusion of funding under the BIL shows a clear understanding by Congress of the need and value of the AML programs and the critical work we conduct.

The Stream Act of 2023 amended the BIL to allow for states to make the decision to “set-aside” up to 30% of their annual BIL Grant Funding into an interest-bearing account to cover long-term operation and maintenance costs associated with acid mine drainage (AMD), mine fires, and subsidence problems. This flexibility is critical to the long-term management of state AML programs and to be able to plan for future costs adequately.

There are some areas where changes should be considered that could improve the AML program, benefiting Wyoming and other states, resulting in better utilization of the funds provided by Congress.

A major concern is the process that the Office of Surface Mining Reclamation and Enforcement (OSMRE) has established to implement the BIL program. OSMRE is requiring all states to update their AML Reclamation Plans and has added many new tracking metrics that do not exist in statute. Although many of these metrics are considered “recommended”, adding these to a state AML Reclamation Plan is a backdoor method of essentially making them requirements. Many of the requested tracking metrics have nothing to do with mine reclamation and are not associated with any aspect of the Surface Mining Control and Reclamation Act (SMCRA). Wyoming does not have the staff or resources to track these burdensome metrics. Currently, all AML States are working under an approved Reclamation Plan and have been for many decades. The work continues because the plans direct the work in accordance with SMCRA. The BIL funding can only be used for coal reclamation which was the original purpose of SMCRA. There is no requirement within the BIL for states to update their reclamation plans. Including OSMRE’s new onerous tracking metrics being required in state reclamation plans for funding approval under the BIL raises concerns that the reclamation plans could be interpreted as placing those new “requirements” on all funding: fee collections or BIL. SMCRA does not have provisions requiring these conditions and expansion to include the onerous BIL conditions would be a cause for concern. The metrics added by OSMRE clearly do not have any basis in statute.

Wyoming submitted the latest update to the Wyoming Reclamation Plan in July 2020 and had it approved by OSMRE in October of 2021. We see no reason that state AML Reclamation Plans should be required to be updated simply because of the addition of the BIL funding. All funding is used for AML reclamation and existing plans are adequate to address both the Fee-based and BIL programs. Requiring states like Wyoming to update their plan simply consumes essential staff resources and budget that could be better applied to actual reclamation.

The successful implementation of AML Programs is largely dependent upon a strong relationship and trust between OSMRE and the states. When the trust breaks down effective implementation of the program and benefits to the public suffer. An example where trust has been eroded is related to Projects Lists that OSMRE planned to require to be submitted with each BIL Grant Application. Wyoming joined with other states to work with OSMRE to develop guidance language that would satisfy OSMRE’s perceived need in a manner that was effective for the states. Historically, in the early years of the program, OSMRE initially required project lists to be submitted with grant applications. The project list

requirement was done away with by OSMRE in 1994 after an exhaustive evaluation of the grant process to increase efficiency. Twenty-nine years later and OSMRE is attempting to reinstate that requirement. During several Project List Workgroup Meetings, it was mutually determined by OSMRE and the state representatives that providing Problem Area Descriptions (PADs) instead of a Project List would be sufficient to meet the AML program needs of OSMRE and the states PADs are areas that would encompass numerous projects and mines and precede the development of a defined project. Language was agreed to by both OSMRE and the states but when the OSMRE 2023 BIL Grant Guidance was released, it did not include the agreed upon language. This change was made unilaterally by OSMRE with no advance notice to Wyoming or other states. OSMRE took it upon itself to alter agreed upon language, without giving their partners the opportunity to review and comment. This approach erodes trust and does not comply with the principles of cooperative federalism.

The National Technical Transfer Program (NTTP) is an example of where OSMRE has greatly supported the states, at least prior to the COVID-19 pandemic. The NTTP has not recovered completely from the challenging times of the pandemic but is now in a position, with the new BIL funding, to overhaul and make significant improvements to the program. Training is a critical component of assisting new staff to be as effective as possible in their work. The NTTP is key to providing this training nationally. Wyoming encourages increased focus on OSMRE employing full-time staff to support the training. This could include OSMRE hiring professional instructors instead of relying on state AML staff, which adds an unnecessary burden on already strained state programs. OSMRE needs to dedicate staff to the scheduling of classes and provide travel funds for instructors and students. Recently, state staff have had training classes canceled just one or two days before the training. Finally, it's been requested for many years that the training classes have an eastern and western regional focus as the reclamation challenges are significantly different due to topography and rainfall. These classes should also be taught regionally so local field trips provided during the classes would be pertinent to the information taught. The reclamation challenges we face in Wyoming are very different than West Virginia or Pennsylvania because of topography, soil conditions, and rainfall.

AML programs provide great value to the environment and communities in all of the AML states. The expenditure of funds for reclamation is a major investment that provides very significant benefits. To gain the greatest benefit from the use of the funds, the entire process at the federal and state levels needs to be as efficient as possible. Adding unnecessary requirements, such as reporting on non-essential metrics or revising state reclamation plans, provides no meaningful benefit to the value of our work. OSMRE and Wyoming should be partners in these efforts, but the partnership has struggled unnecessarily.

Wyoming runs an efficient, lean program and is always willing to participate in any efforts to improve the quality of the program. Efficiency is important for Wyoming as evidenced by our ability to run our entire program with a staff of 12. Demands on staff resources for things such as revising our reclamation plan unnecessarily detract from the real work of the AML program – addressing public safety concerns by mitigating hazards and reclaiming abandoned mines.

Thank you for the opportunity to testify today.