

Statement of Gregory E. Conrad, Executive Director, Interstate Mining Compact Commission on Behalf of the Interstate Mining Compact Commission re Oversight Hearing on *The Effect of the President's FY 2013 Budget and Legislative Proposals for the Office of Surface Mining on Private Sector Job Creation, Domestic Energy Production, State Programs and Deficit Reduction* before the House Energy and Mineral Resources Subcommittee -- March 6, 2012

My name is Gregory E. Conrad and I serve as Executive Director of the Interstate Mining Compact Commission, on whose behalf I am appearing today. I appreciate the opportunity to present this statement to the Subcommittee regarding the views of the Compact's 24 member states on the Fiscal Year (FY) 2013 Budget Request for the Office of Surface Mining Reclamation and Enforcement (OSM) within the U.S. Department of the Interior. In its proposed budget, OSM is requesting \$57.3 million to fund Title V grants to states and Indian tribes for the implementation of their regulatory programs, a reduction of \$11 million or 15% below the FY 2012 enacted level. OSM also proposes to reduce mandatory spending for abandoned mine lands (AML) program by \$180 million pursuant to a legislative proposal to eliminate all AML funding for certified states and tribes.

The Compact is comprised of 24 states that together produce some 95% of the Nation's coal, as well as important noncoal minerals. The Compact's purposes are to advance the protection and restoration of land, water and other resources affected by mining through the encouragement of programs in each of the party states that will achieve comparable results in protecting, conserving and improving the usefulness of natural resources and to assist in achieving and maintaining an efficient, productive and economically viable mining industry.

OSM has projected an amount of \$57.3 million for Title V grants to states and tribes in FY 2012, an amount which is matched by the states each year. These grants support the implementation of state and tribal regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA) and as such are essential to the full and effective operation of those programs. Pursuant to these primacy programs, the states have the most direct and critical responsibilities for conducting regulatory operations to minimize the impact of coal extraction operations on people and the environment. The states accomplish this through a combination of permitting, inspection and enforcement duties, designating lands as unsuitable for mining operations, and ensuring that timely reclamation occurs after mining.

In Fiscal Year 2012, Congress approved \$68.6 million for state Title V grants. This continued a much-needed trend whereby the amount appropriated for these regulatory grants aligned with the demonstrated needs of the states and tribes. The states are greatly encouraged by the significant increases in Title V funding approved by Congress over the past three fiscal years. Even with mandated rescissions and the allocations for tribal primacy programs, the states saw a \$12 million increase for our regulatory programs over FY 2007 levels. State Title V grants had been stagnant for over 12 years and the gap between the states' requests and what they received was widening. This debilitating trend was compounding the problems caused by inflation and uncontrollable costs, thus undermining our efforts to realize needed program

improvements and enhancements and jeopardizing our efforts to minimize the potential adverse impacts of coal extraction operations on people and the environment.

In its FY 2013 budget, OSM has once again attempted to reverse course and essentially unravel and undermine the progress made by Congress in supporting state programs with adequate funding. As states prepare their future budgets, we trust that the recent increases approved by Congress will remain the new base on which we build our programs. Otherwise, we find ourselves backpedaling and creating a situation where those who were just hired face layoffs and purchases of much needed equipment are canceled or delayed. Furthermore, a clear message from Congress that reliable, consistent funding will continue into the future will do much to stimulate support for these programs by state legislatures and budget officers who each year, in the face of difficult fiscal climates and constraints, are also dealing with the challenge of matching federal grant dollars with state funds. In this regard, it should be kept in mind that a 15% cut in federal funding generally translates to an additional 15% cut for *overall* program funding for many states, especially those without federal lands, since these states can generally only match what they receive in federal money.

OSM's solution to the drastic cuts for state regulatory programs comes in the way of an unrealistic assumption that the states can simply increase user fees in an effort to "eliminate a de facto subsidy of the coal industry." No specifics on how the states are to accomplish this far-reaching proposal are set forth, other than an expectation that they will do so in the course of a single fiscal year. OSM's proposal is completely out of touch with the realities associated with establishing or enhancing user fees, especially given the need for approvals by state legislatures. IMCC's polling of its member states confirmed that, given the current fiscal and political implications of such an initiative, it will be difficult, if not impossible, for most states to accomplish this feat at all, let alone in less than one year. OSM is well aware of this, and yet has every intention of aggressively moving forward with a proposal that was poorly conceived from its inception. We strongly urge the Subcommittee to reject this approach and mandate that OSM work through the complexities associated with any future user fees proposal in close cooperation with the states and tribes before proposing cuts to federal funding for state Title V grants.

At the same time that OSM is proposing significant cuts for state programs, the agency is proposing sizeable increases for its own program operations (\$4 million) for federal oversight of state programs, including an increase of 25 FTEs. In making the case for its funding increase, OSM's budget justification document contains vague references to the need "to improve the implementation of existing laws" and to "strengthen OSM's skills base." More specifically, OSM states in its budget justification document (on page 60) that "with greater technical skills, OSM anticipates improved evaluation of permit-related actions and resolution of issues to prevent unanticipated situations that otherwise may occur as operations progress, thereby improving implementation of existing laws". In our view, this is code language for enhanced and expanded federal oversight of state programs. However, without more to justify the need for more oversight and the concomitant increase in funding for federal operations related thereto, Congress should reject this request. The overall performance of the states as detailed in OSM's

annual state program evaluation reports demonstrates that the states are implementing their programs effectively and in accordance with the purposes and objectives of SMCRA.¹

In our view, this suggests that OSM is adequately accomplishing its statutory oversight obligations with current federal program funding and that any increased workloads are likely to fall *upon the states*, which have primary responsibility for implementing appropriate adjustments to their programs identified during federal oversight. In this regard, we note that the federal courts have made it abundantly clear that SMCRA's allocation of exclusive jurisdiction was "careful and deliberate" and that Congress provided for "mutually exclusive regulation by either the Secretary or state, but not both." *Bragg v. West Virginia Coal Ass'n*, 248 F. 3d 275, 293-4 (4th Cir. 2001), cert. Denied, 534 U.S. 1113 (2002). While the courts have ruled consistently on this matter, the question remains for Congress and the Administration to determine, in light of deficit reduction and spending cuts, how the limited amount of federal funding for the regulation of surface coal mining and reclamation operations under SMCRA will be directed – to OSM or the states. For all the above reasons, we urge Congress to approve not less than \$70 million for state and tribal Title V regulatory grants, as fully documented in the states' and tribes' estimates for actual program operating costs.²

With regard to funding for state Title IV Abandoned Mine Land (AML) program grants, Congressional action in 2006 to reauthorize Title IV of SMCRA has significantly changed the method by which state reclamation grants are funded. Beginning with FY 2008, state Title IV grants are funded primarily by mandatory appropriations. As a result, the states should have received a total of \$488 million in FY 2013. Instead, OSM has budgeted an amount of \$307 million based on an ill-conceived proposal to eliminate mandatory AML funding to states and tribes that have been certified as completing their abandoned coal reclamation programs. This \$180 million reduction flies in the face of the comprehensive restructuring of the AML program that was passed by Congress in 2006, following over 10 years of Congressional debate and hard fought compromise among the affected parties. In addition to the elimination of funding for certified states and tribes, OSM is also proposing to reform the distribution process for the remaining reclamation funding to allocate available resources to the highest priority coal AML sites through a competitive grant program, whereby an Advisory Council will review and rank AML sites each year. The proposal, which will require adjustments to SMCRA, will clearly undermine the delicate balance of interests and objectives achieved by the 2006 Amendments. It is also inconsistent with many of the goals and objectives articulated by the Administration

¹ While not alluded to or fully addressed in OSM's budget justification document, there are myriad statutory, policy and legal issues associated with several aspects of the agency's enhanced oversight initiative, especially three recently adopted directives on annual oversight procedures (REG-8), corrective actions (REG-23) and Ten-Day Notices (INE-35). IMCC submitted extensive comments regarding the issues associated with these directives and related oversight actions (including federal inspections) on January 19, 2010, July 8, 2010 and January 7, 2011.

²We are particularly concerned about recent OSM initiatives, primarily by policy directive, to duplicate and/or second-guess state permitting decisions through the reflexive use of "Ten-Day Notices" as part of increased federal oversight or through federal responses to citizen complaints. OSM specifically addresses this matter in its budget justification document (on page 69) where it states that "OSM has an obligation under section 521 of SMCRA to take steps to ensure that all types of violations, including violations of performance standards or permit conditions and violations of permitting requirements, are corrected if the state does not take action to do so. Aside from the impact on limited state and federal resources, these actions undermine the principles of primacy that underscore SMCRA and are likely to have debilitating impacts on the state-federal partnership envisioned by the Act.

concerning both jobs and environmental protection. We urge the Congress to reject this unjustified proposal, delete it from the budget and restore the full mandatory funding amount of \$488 million. A resolution adopted by IMCC last year concerning these matters is attached. We also endorse the testimony of the National Association of Abandoned Mine Land Programs (NAAML) which goes into greater detail regarding the implications of OSM's legislative proposal for the states.

We also urge Congress to approve continued funding for the AML emergency program. In a continuing effort to ignore congressional direction, OSM's budget would completely eliminate funding for state-run emergency programs and also for federal emergency projects (in those states that do not administer their own emergency programs). When combined with the great uncertainty about the availability of remaining carryover funds, it appears that the program has been decimated. Funding the OSM emergency program should be a top priority for OSM's discretionary spending. This funding has allowed the states and OSM to address the unanticipated AML emergencies that inevitably occur each year. In states that have federally-operated emergency programs, the state AML programs are not structured or staffed to move quickly to address these dangers and safeguard the coalfield citizens whose lives and property are threatened by these unforeseen and often debilitating events. And for minimum program states, emergency funding is critical to preserve the limited resources available to them under the current funding formula. We therefore request that Congress restore funding for the AML emergency program in OSM's FY 2013 budget.

On a somewhat related matter, there appears to be increasing concern by some in Washington that the states and tribes are not spending the increased AML grant moneys that they have received under the 2006 Amendments in a more expeditious manner, thus resulting in what the Administration has characterized as unacceptable levels of "undelivered orders". What these figures and statements fail to reflect is the degree to which AML grant moneys are obligated or otherwise committed for AML reclamation work as part of the normal grant process. Most AML grants are either three or five years in length and over that course of time, the states and tribes are in a continual process of planning, bidding and contracting for specific AML projects. Some projects are multi-layered and require extended periods of time to complete this process before a shovel is turned at the AML site. And where federal funding is concerned, additional time is necessary to complete the myriad statutory approvals for AML work to begin, including compliance with the National Environmental Policy Act and the National Historic Preservation Act.

In almost every case, however, based on the extensive planning that the states and tribes undertake, AML grant funds are committed to specific projects even while clearances and bidding are underway. While funds may not technically be "obligated" because they are not yet "drawn down", these funds are committed for specific purposes. Once committed, states and tribes consider this grant money to be obligated to the respective project, even though the "order" had not been "delivered" and the funds actually "drawn down". The latter can only occur once the project is completed, which will often be several years later, depending on the size and complexity of the project. We would be happy to provide the Subcommittee with more detailed information about our grant expenditures and project planning in order to answer any questions

you may have about how we account for and spend our AML grant moneys. Given the confusion that often attends the various terms used to describe the grant expenditure process, we believe it is critical that Congress hear directly from the states and tribes on this matter and not rely solely on the Administration's statements and analyses. We welcome the opportunity to brief your Subcommittee in more detail regarding this issue should you so desire.

One of the more effective mechanisms for accomplishing AML restoration work is through leveraging or matching other grant programs, such as EPA's 319 program. Until FY 2009, language was always included in OSM's appropriation that encouraged the use of these types of matching funds, particularly for the purpose of environmental restoration related to treatment or abatement of AMD from abandoned mines. This is a perennial, and often expensive, problem, especially in Appalachia. IMCC therefore requests the Committee to once again include language in the FY 2013 appropriations bill that would allow the use of AML funds for any required non-Federal share of the cost of projects by the Federal government for AMD treatment or abatement.

We also urge the Committee to support funding for OSM's training program, including moneys for state travel. These programs are central to the effective implementation of state regulatory programs as they provide necessary training and continuing education for state agency personnel. In this regard, it should be noted that the states provide nearly half of the instructors for OSM's training course and, through IMCC, sponsor and staff benchmarking workshops on key regulatory program topics. IMCC also urges the Committee to support funding for TIPS, a program that directly benefits the states by providing critical technical assistance. Finally, we support funding for the Watershed Cooperative Agreements in the amount of \$1.2 million.

Attached to our testimony today is a list of questions concerning OSM's budget that we request be included in the record for the hearing. The questions go into further detail concerning several aspects of the budget that we believe should be answered before Congress approves funding for the agency or considers advancing the legislative proposals contained in the budget.

Thank you for the opportunity to present this statement. I would be happy to answer any questions you may have or provide additional information to the Subcommittee.