

“Abandoned Mine Land Reclamation: Progress; Pitfalls and the
Importance of Partnerships”

Presented by
Gregory E. Conrad
Executive Director
Interstate Mining Compact Commission

2014 Pennsylvania Abandoned Mine Land Conference

June 27, 2014
State College, PA

Thanks for the opportunity to speak with you today about a subject that is near and dear to my heart. Not too many months ago, I had the opportunity to speak to state and tribal members of the National Association of Abandoned Mine Land Programs (NAAML) about a topic very similar to the one I will address today: pursuing productive partnerships. I began by noting that about twelve years ago, we were focused on legislative action to amend Title IV of the Surface Mining Control and Reclamation Act (SMCRA) to extend fee collection authority beyond the expiration date of September 30, 2004 to support the AML Trust Fund. I noted then the importance of forging effective working relationships with OSM, congressional staff and other interested and affected parties, including watershed groups, environmental organizations and the mining industry. In particular, I stated that it would be critical for the states and tribes to stand behind the 30 years of experience and expertise we had developed with respect to our implementation of effective and efficient AML programs and why it was vital for the states and tribes to remain the primary delivery mechanism for these services in order to avoid duplication of effort and wasted resources, while at the same time pursuing the partnerships that have advanced these objectives.

They say that history has a way of repeating itself and that everything old is new again. Our experience with the AML program is a classic example of both adages. Today, we find ourselves engaged in a variation of the same battles that were waged twelve years ago – and this following what appeared to be a complete and final victory for the AML program in 2006. And yet in the midst of these challenges, the partnerships we have forged over the years with one another are as important as ever.

Some here today may not be familiar with the course of events over the past few years, so let me bring everyone quickly up to date. With the potential termination of fee collection authority for the AML program under Title IV of SMCRA looming once again following multiple short-term extensions, Congress opted for a longer range, more permanent solution in December of 2006 when it passed extensive amendments to Title IV as part of the Tax Relief and Health Care Act of 2006. The reason the AML amendments found themselves attached to a health care bill was due to the fact that it provided a mechanism to address health care premiums for a certain class of miners and their families under the United Mine Workers' pension plan, known as the Combined Benefit Fund (or CBF). Because the AML program had previously provided a source of funding for the CBF using the interest generated from the AML Trust Fund, it became a viable vehicle for enhanced CBF revenue. In the end, based on the coalition of interests that was necessary to pass the legislation, the AML program saw several enhancements, including the extension of fee collection authority through September 30 of 2021, a realignment of program funding and priorities, and the overall preservation of the program.

Since that time, however, there have been several attempts by the Administration to revisit and readjust several key aspects of the program, including funding for certified states and tribes, the mechanism by which grant moneys are distributed among the uncertified states, and the available uses of AML grants moneys for such things as acid mine drainage, water supply projects and noncoal reclamation. These proposed

alternations to the carefully crafted compromise that resulted in the 2006 amendments to SMCRA have been included in proposed budgets for the Office of Surface Mining and in proposed deficit reduction plans. To date, the proposals, and the suggested legislative changes that would be necessitated by them, have been fully rejected by both the authorizing committees on Capitol Hill and the appropriating committees.

Nonetheless, in June of 2012, an unexpected turn of events gave us significant pause and is reason for concern about the future of the AML program and its potential to serve as a target for deficit reduction and spending offsets. On June 29 of that year, Congress passed H.R. 4348, a transportation bill also known as MAP-21 (Moving Ahead for Progress in the 21st Century Act – Public Law 112-141). The bill's primary purpose was to provide funding for infrastructure improvements for our Nation's aging highways and bridges. However, also contained in the minutia of the bill was enhanced funding for the Secure Rural Schools (SRS) and Payment in Lieu of Taxes (PILT) programs, which provide moneys to local governments (primarily counties) for schools, roads, and other local services such as search and rescue. In order to assure funding for these two programs, offsets were required from other programs. Section 100125 was inserted at the last minute during conference committee deliberations that caps annual payments from the AML Trust Fund to certified states and tribes at \$15 million. This was accomplished through a permanent amendment to Title IV of SMCRA (Section 411(h)(5)) and translates to savings to the U.S. Treasury of at least \$700 million based on the payments that would otherwise be made to the state of Wyoming. Initially there were also concerns that the measure would result in nearly \$550 million in funding reductions to uncertified states with historic coal production, given the operation of the other provisions of SMCRA regarding reallocation of moneys that are paid to certified states and tribes. In the end, a further perfecting amendment to SMCRA was passed by the Congress to insure that historic production funding for uncertified states would remain intact.

There was a fair amount of speculation at the time about why this move against the AML Trust Fund was necessary as an offset for SRS and PILT, and even who was responsible for it. Regardless, the implications for the AML program were and continue to be huge. First, that 2012 legislative maneuver set a terrible precedent for future raids on the trust fund. The balance in the Fund remains at about \$2.85 billion and until future payments are made to states and tribes over the course of the next 8 years that draw this amount down, the balance remains a tempting target for those looking for offsets and budget adjustments. Even the draw down issue has generated unwarranted and misplaced attention over the past several years and, as a result, IMCC and NAAML have undertaken efforts to explain and clarify what the "undelivered orders" concern really means.

Second, the seemingly "simple" amendment of SMCRA worked by MAP-21 highlighted the complexity of the 2006 amendments and the serious consequences that result from not understanding the intricacies of the law. Suffice it to say that nothing about the 2006 amendments was simple. They represented a balance of interests which resulted in a bevy of technical adjustments to the law that still cause many heads to spin in an attempt to understand them. To its credit, OSM did a masterful job of sorting out

much of this complexity in its rulemaking effort during 2007 and 2008, even though the agency did not always agree with our perspective as AML program managers.

Interestingly, we were not the only ones who had concerns about the direction of the AML program given the 2012 legislative maneuver to amend SMCRA. We were in contact with several other affected stakeholders including watershed groups, environmental organizations and mining industry groups during the period, all of whom were watching developments closely and were prepared to weigh in with their perspectives about the implications of these types of revisions to SMCRA. As it turned out, once the dust settled by the end of 2012, we had a higher level of confidence that the only big loser was Wyoming. And very recently, with the passage of the Helium bill last year, even Wyoming had a portion of its lost AML moneys restored to the tune of \$75 million.

More recently, the challenges for the AML program on Capitol Hill have revolved around the appropriations process. Over the past few years, there have been several important and encouraging developments for the states and the tribes and much was a result of the excellent working relationships we have fostered with both the authorizing committees (House Natural Resources and Senate Energy and Natural Resources) and the appropriations committees in both the House and the Senate. IMCC and NAAMLPL were invited to testify at several oversight hearings conducted by these committees, including those on the OSM/BLM consolidation, OSM's stream protection rule, solutions for AML cleanups and Good Samaritan protections, and OSM's budget proposals. As a direct result of our input, we were able to turn back proposed cuts to AML funding for certified states and tribes, as well as proposals in FY 2012 and 2013 to reform the mechanism by which AML moneys would be distributed among the states and tribes. I also believe that our testimony on the OSM/BLM consolidation was instrumental in the Interior Department's decision to scale back the scope of the initiative. We hope to see continued focus on hardrock AML legislative solutions, especially Good Sam protections, as a result of the recommendations provided by the states and tribes. Even now we are working with the House Natural Resources Committee to formulate legislative language for Good Sam protections that may be included in a new bill that could be the subject of a legislative hearing later this summer or fall.

But the most challenging and, in many ways frustrating, legislative dilemma we face with regard to funding is sequestration. Although the automatic spending cuts associated with sequestration were held in abeyance for Fiscal Years 2014 and 2015 with respect to discretionary spending, apparently this is not the case for mandatory appropriations like those associated with the AML program. So each year we continue to see cuts in the 5 – 7% range for the mandatory funding that supports state and tribal AML programs. Over time, this is adding up to a substantial amount of money. For instance, Pennsylvania alone stands to lose upwards of \$37 million over the remaining course of the current AML program should sequestration continue. And most disturbing of all is that we have no clue where this money is going. We know that it comes from a dedicated trust fund, where it should remain if it is not appropriated. But we are told that this may not be the case and that the money may be permanently lost.

IMCC, NAAMLPL and OSM have each made valiant strides to turn the tide on this matter and seek exemption from sequestration, but so far have been unsuccessful for a variety of reasons – not the least of which is knowing who we should be talking with about the matter. The appropriations committees do not have jurisdiction; the authorizing committees either do not have jurisdiction or are loathe to engage in any significant way. The House Ways and Means Committee supposedly has jurisdiction, but has recently told us that the House Budget Committee is the place we should bring our arguments. And the Office of Management and Budget continues to be very unhelpful with respect to state and tribal concerns associated with any AML matter following our victory on extending fee authority in 2006. So we continue to look for ways to work the system, but it is an uphill battle.

How does all this resound in terms of building productive partnerships into the future? Again, as I noted in the past, there is probably no other state/federal initiative that is as dependent on the pursuit of productive partnerships and a collaborative approach as the AML program. There are myriad interests, issues and considerations from a regulatory, policy and political perspective that must be reconciled and resolved as the program moves forward. Soon we will be looking at the potential of once again reauthorizing the AML program through fee extension beyond 2021 given the AML problems that remain on the inventory, especially in the Eastern U.S. By working with all interested and affected parties, the states will be better positioned to advocate our views and protect our interests, particularly if we can continue to hold together as a coalition of interests. Given our jointly held objective of serving our constituents by assuring protection of public health and safety, environmental restoration and economic development in the coalfields of America, this should allow us stay focused on the task at hand and work cooperatively together.

How have partnerships fared for the states and tribes under the AML program? All in all, quite well – even to the extent of being a model for other state programs. For instance, in 2006, IMCC and NAAMLPL undertook an initiative entitled “Partnering for Success”, where we surveyed and then shared the nature and types of partnerships in which states and tribes were engaged with both the federal government and others such as watershed groups and environmental organizations. Many of these working relationships continue to thrive today, resulting in notable on-the-ground results in terms of environmental restoration and water quality improvements. States and tribes have also effectively leveraged their AML funds through government-financed construction projects with the coal industry, which has resulted in enhancements that were otherwise unattainable. OSM and others have recognized the value of this work through the presentation of national awards. In the majority of these cases, the states and tribes have demonstrated how working smarter through meaningful partnerships achieves cost effective results with long-term benefits.

What have we learned over the years from these efforts? Has it been worth the time and energy that goes into developing and fostering these relationships? Is it the most cost effective approach for meeting our obligations under the laws we are tasked

with administering? And how do partnerships differ from our normal working relationships with one another? President Lyndon B. Johnson was found of saying: “There are no problems we cannot solve together, and very few we can solve by ourselves.” That maxim, I believe, was meant to apply to governments and organizations, not just individuals. It is easy to become insular in our thinking and in our work, especially in these days of shrinking budgets and human resources and increasing workloads. Finding and taking the time to invest in partnerships where there is a commitment to a common purpose and an agreement on shared principles of how to work together tends to be above and beyond the normal call to duty. And there are often no guarantees that the ultimate result will be any different or better than without them. And yet, I think we have found over the years that there are myriad benefits that come from investing in partnering.

- 1) We come to better understand where one another is coming from. In a normal working relationship, parties proceed from their respective corners and rarely get a glimpse of what motivates their thinking or positions. When we operate as partners, an important part of the working relationship is sharing these motivations in order to reach a consensus decision or common understanding of the problem we’re attempting to solve. This in turn builds trust, which is essential to a cooperative and productive environment.
- 2) We are able to build coalitions of support and interest that can be vital in winning the day for a particular initiative. Perhaps the best example of this is the partnerships that were forged in advance of the 2006 amendments to SMCRA. And there were several of them – not just among the Eastern and Western states, but also among the states, industry and environmental groups. Many working sessions were held among the various coalitions and with congressional staff to work through the myriad policy and technical issues that attended the adoption of this important piece of legislation.
- 3) We are able to actually move more expeditiously toward a resolution of issues or the completion of an AML project because all of the parties are at the table and ideas and solutions can be hammered out and then serve as the basis for action, saving valuable time and resources.
- 4) There is a shared commitment to the particular task or initiative that often has long-term results for working relationships, even where the hoped for outcome was not achieved. Attempting to replicate that process through other types of working relationships is often elusive.

What will a continuing investment in these partnerships require of us in the future? What have we learned from our past experiences with them? I turned to some of my colleagues who manage state AML programs for their insight on these questions given their first-hand experience with the partnering process. Here is what they had to say:

- 1) Effective leadership is essential. Without it, the process can lose focus and get distracted or bogged down. At the same time, the leader should be a facilitator, not a dictator, allowing the group to function together with all the partners owning the process.
- 2) How the partnering effort is structured is key to its success and effectiveness. Too large of a group can become unwieldy and lead to analysis paralysis. The participants

must understand their roles and be willing to cede authority to the group as a whole. The group must be educated, equipped and encouraged early on to build and maintain enthusiasm for the initiative.

3) Working with local groups allows states and tribes to better identify and address local problems and establishes working relationships that endure. This can be particularly helpful when seeking political support, additional funding, or public awareness of AML projects.

4) Partners need to be aware of and be prepared to address organizational and cultural differences, which in some instances can trip up the process. Establishing ground rules and sideboards, including time frames for action, how consensus is defined, and when to terminate the process, are essential. Effective communication among the partners is particularly important.

State and tribal AML programs have served as laboratories for these types of partnerships over the years, and will likely be presented with new opportunities in the future. I would encourage us to take advantage of them, as prior results have proved worthwhile, especially in terms of our accomplishments. In this regard, the AML Association recently distributed an updated version of its AML Accomplishments Report to every member of Congress which highlights the more than 350,000 acres of high priority abandoned coal mine sites that have been reclaimed through \$6.2 billion in grants to states and tribes since the program's inception. More specifically, this means that hazards associated with more than 19,500 open mine portals, over 725 miles of dangerous highwalls, and 26,000 acres of dangerous piles and embankments have been eliminated and the land reclaimed. The report goes on to note that "through the cooperation of private land owners, industry representatives, federal agencies, local officials and watershed groups, thousands of additional acres of abandoned mined land have been transformed into productive uses such as farmland, pasture, open space, wildlife habitat and recreational areas". I have copies of the NAAML report with me today for those who may be interested in a copy.

In closing, I'm reminded of what Newt Gingrich once said: "Perseverance is the hard work you do after you get tired of doing the hard work you already did." Many of us can relate, especially when it comes to committing to initiatives that require more of us than we thought we had left. That's often the case with partnerships and collaborative efforts. In the end, I trust that we find them worth the effort and that they will pay dividends even beyond their obvious purposes. It will be incumbent on all of us to choose the best and most promising approaches as we seek to balance the use of our abundant natural resources with the protection, preservation and restoration required under our state and federal laws. Much of this transcends political parties and Administrations and focuses more on good government that works smarter and values common sense approaches to the challenges we face. And as such, the partnerships we pursue and produce today will serve to advance these goals and reap benefits well into the future.

Contact Information:

Presenter: Gregory E. Conrad, Executive Director, Interstate Mining Compact Commission

Address: 445-A Carlisle Drive, Herndon, VA 20170

Phone: (703) 709-8654

E-mail: gconrad@imcc.isa.us

Biography:

Greg Conrad is Executive Director of the Interstate Mining Compact Commission (IMCC), a multi-state governmental organization representing 25 mineral producing states. Greg has served in his position since 1988 and is responsible for overseeing several issues of importance to the states in the legislative and regulatory affairs arenas including mining and reclamation, mine placement of coal combustion products, identification and restoration of abandoned mine lands, mine safety and health, and various environmental issues associated with mineral production such as surface and ground water quality and quantity.

Prior to joining IMCC, Greg served for nine years as senior counsel with the American Mining Congress, which is now part of the National Mining Association. While with AMC, Greg had primary staff responsibility for several coal related issues including transportation, leasing, research and development initiatives, and surface mining and reclamation.

Greg has spoken and presented papers at a variety of meetings and conferences hosted by such organizations as the Eastern Mineral Law Foundation, the National Academy of Science, the Conference of Government Mining Attorneys, the American Association of State Geologists, the Colorado School of Mines, the Office of Surface Mining, the National Association of Abandoned Mine Land Programs, the National Mining Association, the Environmental Law Institute and various state government groups. He has written extensively on mining issues for professional journals and magazines.

Greg graduated from Michigan State University with a degree in business administration and later from the University of Detroit/Mercy School of Law where he was an associate editor of the law review.