STATEMENT OF

THE INTERSTATE MINING COMPACT COMMISSION

Re: Legislative Hearing on

S.2830 – To Amend the Surface Mining Control and Reclamation Act of 1977

Before the

Public Lands and Forests Subcommittee of the
Senate Committee on Energy and Natural Resources

March 23, 2010

My name is Gregory E. Conrad and I serve as Executive Director of the Interstate Mining Compact Commission (IMCC). I appreciate the opportunity to appear before the Subcommittee today to present our views on S. 2830, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects. I am also appearing today on behalf of the National Association of Abandoned Mine Land Programs. Both organizations strongly support this critical amendment to SMCRA.

The Interstate Mining Compact Commission (IMCC) is an organization of 24 states located throughout the country that together produce some 95% of the Nation's coal, as well as important hardrock and other noncoal minerals. Each IMCC member state has active mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the reclamation of abandoned mines. Over the years, IMCC has worked with the states and others to identify the nature and scope of the abandoned mine land problem, along with potential remediation options.

The NAAMLP is a tax-exempt organization consisting of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation's coal production. All of the states and tribes within the NAAMLP administer abandoned mine land (AML) reclamation programs funded and overseen by the Office of Surface Mining (OSM) pursuant to Title IV of the Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87).

In testimony we presented to the Committee on July 14th of last year at a legislative hearing on reform of the 1872 Mining Law, we noted that nationally, abandoned mine lands continue to have significant adverse effects on the environment. Some of the types of environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, sedimentation, chemical release, and acid mine drainage. Safety hazards associated with abandoned mines account for deaths and/or injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years, are scattered throughout the United States. The sites are located on private, state and public lands.

Over the years, several studies have been undertaken in an attempt to quantify the hardrock AML cleanup effort. In 1991, IMCC and the Western Governors' Association completed a multi-volume study of inactive and abandoned mines that provided one of the first broad-based scoping efforts of the national problem. Neither this study, nor any subsequent nationwide study, provides a quality, completely reliable, and fully accurate on-the-ground inventory of the hardrock AML problem. Both the 1991 study and a recent IMCC compilation of data on hardrock AML sites were based on available data and professional judgment. While the data is seldom comparable between states due to the wide variation in inventory criteria, they do demonstrate that there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that remediation costs are very large.

Across the country, the number of abandoned hardrock mines with extremely hazardous mining-related features has been estimated at several hundred thousand. Many of the states and tribes report the extent of their respective AML problem using a variety of descriptions including mine sites, mine openings, mine features or structures, mine dumps, subsidence prone areas, miles of unreclaimed highwall, miles of polluted waterways, and acres of unreclaimed or disturbed land. Some of the types of numbers that IMCC has seen reported in our Noncoal Mineral Resources Survey and Report and in response to information we have collected for the Government Accountability Office (GAO) and others include the following gross estimated number of abandoned mine sites: Alaska – 1,300; Arizona – 80,000; California – 47,000; Colorado – 7,300; Montana – 6,000; Nevada – 16,000; Utah – 17,000 to 20,000; New York – 1,800; Virginia – 3,000 Washington – 3,800; Wyoming – 1,700. Nevada reports over 200,000 mine openings; New Mexico reports 15,000 mine hazards or openings; Minnesota reports over 100,000 acres of abandoned mine lands and South Carolina reports over 6,000 acres.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. And although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states are intimately familiar with the highest priority problems within their borders and also know where limited reclamation dollars must immediately be spent to protect public health and safety or protect the environment from significant harm. In this regard, we reference a statement we submitted to your Committee on December 22, 2008 regarding the American Recovery and Reinvestment Act (ARRA) and the potential for funding AML cleanup projects to create green jobs and stimulate the economy.

Today, state agencies are working on hardrock abandoned mine problems through a variety of limited state and federal funding sources. Various federal agencies, including the Environmental Protection Agency, Bureau of Land Management, U.S. Forest Service, Army Corps of Engineers and others have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states with our hardrock AML work and, as states take on a larger role for hardrock AML cleanups into the future, we will continue to coordinate with our federal partners. However, most of these existing federal grants are project specific and do not provide consistent funding. For states with coal mining, the most consistent source of AML funding has been the Title IV grants under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites.

In December 2006, Congress significantly amended the SMCRA AML program to, among other things, distribute funds to states in an amount equal to that previously allocated under SMCRA but never appropriated. However, while Section 409 was not changed or amended in any way, the Interior Department, through both a Soliticor's Opinion (M-37014) and rule (73 Fed. Reg. 67576), has now interpreted SMCRA to prohibit this enhanced funding from being used for noncoal projects. This is a significant

blow to states such as New Mexico, Utah and Colorado that have previously used SMCRA AML funds to address many of the more serious hardrock AML problems. .

As you noted in your remarks introducing S. 2830, Mr. Chairman, your bill would remedy the Interior Department's unfortunate interpretation of the 2006 Amendments and as such we strongly support the bill.. That interpretation not only disregards the fact that section 409 was left unamended by Congress, it is also inconsistent with assurances repeatedly given to the states and tribes by OSM during the consideration of the legislation that noncoal work could continue to be undertaken with these AML funds. The interpretation would also have the unacceptable result of requiring states and tribes to devote funds to lower priority coal sites while leaving dangerous noncoal sites unaddressed. While OSM will argue that this may impact the amount of funding available to uncertified states to address high priority coal problems, Congress did not seem overly concerned with this result but rather deferred to its original framework for allowing both high priority coal and noncoal sites to be addressed.

In its final rule implementing the 2006 amendments to SMCRA (at 73 Fed. Reg. 67576, et seq.), OSM continued to abide by its argument that "prior balance replacement" funds (i.e the unappropriated state and tribal share balances in the AML Trust Fund) are fundamentally distinct from section 402(g) moneys distributed from the Fund. This, according to OSM, is due to the fact that these prior balance replacement funds are paid from U.S. Treasury funds and have not been allocated under section 402(g)(1). This is a distinction of convenience for the Interior Department's interpretation of the 2006 Amendments and has no basis in reason or law. The fact is, these funds were originally allocated under section 402(g)(1), are due and owing pursuant to the operation of section 402(g)(1), and did not change their "color" simply because they are paid from a different source. Without the operation of section 402(g)(1) in the first place, there would be no unappropriated (i.e. "prior") state and tribal share balances. The primary reason that Congress appears to have provided a new source for paying these balances is to preserve a balance in the AML Trust Fund to 1) generate continuing interest for the UMW Combined Benefit Trust Fund and 2) to insure that there was a reserve of funding left after fee collection terminates in 2021 to address any residual high priority historic coal problems. There was never an intent to condition or restrict the previously approved mechanisms and procedures that states and tribes were using to apply these moneys to high priority coal and noncoal problems. To change the rules based on such a clever invention is inappropriate and inconsistent with law.

The urgency of advancing this legislation has been heightened, Mr. Chairman, by statements in OSM's proposed budget for Fiscal Year 2011. Therein, OSM is proposing to further restrict the ability of states to expend AML funds on noncoal reclamation projects. This will apparently occur as part of a legislative proposal that the Administration intends to aggressively pursue in the 111th Congress. While the primary focus of that proposal will be the elimination of future AML funding for states and tribes that are certified under Title IV of SMCRA (which we adamantly oppose), OSM's explanation of its proposal also contains the following language: "Similarly, the proposal will require that payments to noncertified States are only used for high-priority coal

problems." We are uncertain exactly what OSM has in mind with respect to this aspect of the legislative proposal, but we suspect it has to do with clarifying the very issue that is the subject of S. 2830. For all we know, it could be even farther reaching.

For the same reasons that Congress needs to clarify this misinterpretation for noncoal AML work, it should also do so for the acid mine drainage (AMD) set aside program. Section 402(g)(6) has, since 1990, allowed a state or tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem. OSM's recent policy (and now regulatory) determination is denying the states the option to set aside moneys from that portion of its grant funding that comes from "prior balance replacement funds" each year to mitigate the effects of AMD on waters within their borders. AMD has ravaged many streams throughout the country, but especially in Appalachia. Given their long-term nature, these problems are technologically challenging to address and, more importantly, are very expensive. The states need the ability to set aside as much funding as possible to deal with these problems over the long term. We therefore urge the Committee to amend S. 2830 to correct the current policy interpretation by Interior and allow the use of unappropriated state and tribal share balances ("prior balance replacement funds") for the AMD set aside, similar to the use of these balances for noncoal work. Suggested amendatory language is attached to our statement.

Over the past 30 years, tens of thousands of acres of abandoned mine lands have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. There are numerous success stories from around the country where the states' AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states pursuant to the distribution of monies from the Fund, have played an important role in achieving the goals and objectives of set forth by Congress when SMCRA was first enacted – including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. Passage of S. 2830 will further these congressional goals and objectives.

In support of our position on S. 2830, we also request that you include for the record the attached resolution (No. 07-8) adopted by the Western Governors that urges the continued use of funds collected or distributed under Title IV of SMCRA for the reclamation of high priority, hard-rock abandoned mines. This resolution is in support of the Western Governors' policy statement B.6.

Thank you for the opportunity to submit this statement on S.2830. We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

Suggested Amendment to S. 2830 to include the AMD set-aside account
(Amendments are in bold and italics)

A Bill

To amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal ***and acid mine drainage*** reclamation projects.

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,

SECTION 1. ABANDONED MINE RECLAMATION.

(a) Limitation on Funds.--Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting ``or section 411(h)(1)" after ``section 402(g)". ***Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(6)(A)) is amended by inserting "or section 411(h)(1)" after "paragraphs (1) and (5)".***

(b) Use of Funds.--Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by inserting ***"section 402(g)(6)" before "section 403" and inserting "section 409"*** after ``section 403".