

TESTIMONY OF

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Legislative Hearing on

H.R. 785 – To Amend the Surface Mining Control and
Reclamation Act of 1977
for Non-certified States to Use Respective AML funds
for Non-Coal Reclamation Projects.

Before the

Energy and Mineral Resources Subcommittee
House Committee on Natural Resources

February 17, 2012

Honorable Chairman Lamborn and Members of the Energy and Mineral Resources Subcommittee,

My name is Frederick H. White, and I am the Executive Director of the Navajo Nation Division of Natural Resources. I am testifying in regard to H.R. 785, a bill entitled: *“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 non-coal reclamation projects”*.

The Navajo Nation (“Nation”) fully supports H.R. 785. Consistent with the substantive goals of SMCRA to insure the protection of public health, safety and property, the proposed amendments will enable non-certified States to use AML funds to address critical and dangerous non-coal related mining issues in their states, including in tribal communities found in such areas as the “checkerboard” Navajo Eastern Agency in New Mexico.

The Navajo Nation’s Abandoned Mine Lands Program (Navajo AML) of the Navajo Nation Division of Natural Resources (DNR) has the continuing authority and responsibility to reclaim abandoned mines, which since certification of the Nation’s coal sites means primarily abandoned uranium mine sites. We have approximately 263 coal sites and 1,089 non-coal sites. The immediate physical hazards of these sites have generally been addressed; however, the Nation’s constituents have recently advised Navajo AML that approximately 500 abandoned uranium mines need to be revisited due to the possibility of further environmental problems. Pursuant to the 2006 amendments to SMCRA, Navajo AML is certified as having completed its coal reclamation; SMCRA authorizes Navajo AML to address non-coal reclamation and to fund public facility projects in areas impacted by past mining activities.¹

When SMCRA was amended in December 2006, it did not allow non-certified states such as New Mexico, Utah and Colorado to use un-appropriated state/tribal share balances in the AML trust funds² for hard rock abandoned mine reclamation. Because of these restrictions, in areas of the Eastern Agency of the Navajo reservation where the

¹ There are numerous unknown dangers associated with abandoned mines where there is a lack of historical mining maps. Navajo AML continues to address newly reported AML sites as well as continuing our monitoring on past reclaimed projects, which must be continually monitored for future stability problems. Since the 2004 and 2006 SMCRA amendments, and since certification for its coal sites, Navajo AML has nonetheless spent over 1.8 million dollars on coal related problems.

² These funds are derived from tax revenues generated from coal mining activities within each state or tribal territory.

State of New Mexico has jurisdiction instead of Navajo AML,³ many hard rock sites in Navajo Nation communities have not been remediated. Navajo families who reside in the Eastern agency on federal allotted lands and private deeded lands purchased by the Navajo Nation have not been cleaned up. There is also a dire need for a thorough inventory to assess these lands and to plan for remediation.

To carry out the purposes of SMCRA in the western portions of the United States, inter-governmental partnerships have been vital to Western AML programs of states and tribes. In our partnership efforts, Navajo AML has teamed up with New Mexico, Colorado, Utah, and the Hopi and Crow tribes to share technical information on all types of mines. Federal, state and local programs regularly request technical assistance from Navajo AML regarding our efforts to address non-coal hazards and problems. We work closely with the New Mexico State AML Program to address AML problems in the checkerboard area in Eastern Agency, but as discussed above, have trouble dealing with hard rock issues there because New Mexico is not a certified state.

The amendments to SMCRA proposed under H.R. 785 will allow New Mexico to address critical uranium contamination and provide reclamation in Navajo tribal communities in complex jurisdictional areas, like the Navajo Eastern Agency. The massive uranium mining activity on the Navajo Nation, and its consequent pervasive contamination of Navajo lands and resources, including in the Navajo Eastern Agency, is the direct result of the Federal Government's need to develop United States Security and Energy programs during the Cold War. Although various federal agencies have provided some funding in the past, these funds are not renewed on an annual basis. There is a large need for on the ground funds to address these issues, and H.R. 785 would take a substantial positive step in the right direction.

Given the federal government's central role in creating this appalling legacy of uranium mining impacts in Navajo Indian Country, it is astonishing to the Nation that the Obama Administration is, yet again, proposing to eliminate AML funding for the Navajo Nation's AML program, and for other certified tribes and states in its Fiscal Year 2013 Budget. This is the 4th year that the Administration has attempted to eliminate this important AML funding.

Navajo AML funds are generated from fees collected from Navajo coal, a tribal trust resource, and a percentage of all such fees are expressly set aside under SMCRA for the Navajo Nation's AML program to deal with uranium issues and to provide critical infrastructure and facilities in communities most impacted by past mining activities. These funds are not taxpayer funds or general funds as wrongly characterized by the U.S. Department of Interior (DOI) and U.S. Office of Management and Budget (OMB), but are generated directly from the Nation's trust assets and rightfully should remain with the Nation to address its mining related needs. Moreover, AML trust funds already identified

³ These areas are known as a "checkerboard" and are a mix of restricted tribal trust and allotted lands, state lands, federal public lands, and fee lands. Navajo AML's jurisdiction is generally limited to tribal trust lands in the checkerboard area.

in the federal treasury as the Nation's funds under the 2006 SMCRA amendments are themselves tribal trust assets.

Any attempt by the Obama Administration to take away funds collected on Navajo coal is a direct abrogation of the federal trust responsibility. Furthermore, diverting Navajo Nation AML trust funds already set aside for the Navajo Nation under existing federal legislation would constitute a taking of the Nation's property under the 5th Amendment of the Federal Constitution. The Administration's proposal to eliminate AML funding for certified states and tribes, and to create a competitive AML grant program based on the highest-priority coal sites, would require amendments to SMCRA, and the Nation urges Congress to reject any such attempt by the Administration. Additionally, limiting the use of these important funds to only high priority coal sites is directly contrary to the intent of the 2006 Amendments to SMCRA, amendments which balanced the interests of multiple stakeholders, and is contrary to the intent of this bill to provide even greater flexibility for non-certified states to address critical hardrock and uranium issues in their states.

As a final consideration, the Nation urges Congress to add language in H.R. 785 clarifying that limited liability protection provided for under SMCRA covers non-coal AML reclamation work as well as coal related reclamation. The Office of Surface Mining and Reclamation's rulemaking, purportedly based on provisions of the 2006 Amendments to SMCRA, removed this protection.

Again, thank you for this opportunity to testify in regard to H.R. 785 on behalf of the Navajo Nation. The Navajo Nation urges that amendments proposed under H.R. 785 be passed by Congress in order to address the serious need in the checkerboard area of Navajo Indian Country, and elsewhere in western states, for remediation of the federal uranium mining legacy there. The Nation also urges that Congress reject any attempt by the Administration to make any changes under SMCRA to the current funding for certified tribes and states that are addressing critical non-coal sites and the needs of communities most impacted by past mining activities.

Respectfully,

THE NAVAJO NATION

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