

STATEMENT OF

STATE OF NEW MEXICO

Secretary John Bemis

New Mexico Energy, Minerals and Natural Resources Department

Legislative Hearing on

H.R. 785

**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 Non-coal Reclamation Projects**

Before the

U.S. HOUSE COMMITTEE ON NATURAL RESOURCES

Rep. Doc Hastings, Chairman

SUBCOMMITTEE ON ENERGY and MINERAL RESOURCES

Rep. Doug Lamborn, Chairman

FEBRUARY 17, 2012

Thank you for the opportunity to present a statement on this important topic.

We appreciate the efforts of Representative Pearce and this Committee to propose legislation that will clarify the intent of Congress under Title IV, the Abandoned Mine Land (AML) program, of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The State of New Mexico strongly supports **H.R. 785**. This bill will make only minor changes to SMCRA to correct a misinterpretation of SMCRA by the Department of the Interior. H.R. 785 will return New Mexico and other states to their longstanding role under SMCRA of directing abandoned mine land grant funds to the highest priority needs at either coal or non-coal abandoned mines.

New Mexico has a long and distinguished history of both coal and hard rock mining. Centuries of mining have left a legacy of thousands of mine openings and other mine hazards that pose serious threats to public health and safety. We estimate that there are more than 15,000 unreclaimed mine hazards across New Mexico. Expanding populations and increasing recreational uses are increasing the exposure to abandoned mine dangers. An example of the AML problem is the numerous abandoned uranium mines located primarily in areas of Native American habitation in northwestern New Mexico.

The primary funding source for AML projects in New Mexico has been Title IV of SMCRA. SMCRA includes provisions for the safeguarding of abandoned coal mines and high priority non-coal mines. Funding from the fees collected on coal production has helped New Mexico address some of our most hazardous abandoned mines. Since the inception of the SMCRA AML program, New Mexico has addressed approximately 4,000 mine features and reclaimed over 700 acres of mine-disturbed land.

Section 409 of SMCRA (30 U.S.C. 1239) allows the States to use AML funds to address high priority non-coal abandoned mines as well as coal mines. While New Mexico still has abandoned coal mines that need reclamation, well over 90% of New Mexico's 15,000

mine hazards are located at abandoned hard rock mines. In the past few decades, all of the fatalities associated with abandoned mines in New Mexico have occurred at non-coal mines; sadly, another fatality occurred in 2010 at an abandoned non-coal mine in New Mexico. With our SMCRA grants, New Mexico has balanced the need to reclaim abandoned coal mines with the need to address the significant and immediate health and safety threats posed by numerous non-coal mines. In the 6 years prior to the 2006 amendments, New Mexico's \$1.5 million annual grant was roughly split between coal (55%) and non-coal (45%) projects.

In December 2006, Congress passed the Tax Relief and Health Care Act of 2006 which included a re-authorization of the AML fee on current coal production and other amendments to the SMCRA Title IV program. One of the major changes was the distribution to the States and Tribes of "state share" funds that had been previously allocated to the States under SMCRA, but had never been appropriated by Congress. For New Mexico, this amounts to approximately \$20 million in additional AML funds distributed over a 7 year period, and presents a tremendous opportunity to address many of the high priority coal and non-coal abandoned mine threats.

Under SMCRA, the "state share" funds were available for use by the States at abandoned coal mines and, under Section 409, also at high priority abandoned non-coal mines. In the 2006 legislation, Congress did not amend Section 409. However, the Interior Department issued an opinion in December 2007 prohibiting the additional AML funds from being used at non-coal abandoned mine projects. The Office of Surface Mining followed with a rule, adopted on November 14, 2008, which codified the Interior Department's interpretation.

The new interpretation flies in the face of Congressional intent. Had the funds been appropriated to the State when they were originally allocated to the State, there would have been no question that these funds could be used for either coal or non-coal projects. Congress did not amend Section 409 of SMCRA in the 2006 amendments. However, the

Interior Department has latched onto Congress' use of a new funding source to distribute the previously allocated funds to claim that the intent changed.

Since the beginning of the AML program, New Mexico, Utah and Colorado have used the SMCRA funds to reclaim abandoned coal mines while also addressing the significant health and safety threats posed by numerous non-coal mines. With these funds, New Mexico successfully completed a number of innovative projects that were recognized by OSM. In the Cerrillos Hills between Santa Fe and Albuquerque, we closed dozens of non-coal mines along trails in a park and protected park visitors from mine hazards while showcasing the mining history. This project received a national award from OSM. New Mexico also received the highest national award from OSM for the Real de Delores project in the Ortiz Mountains which safeguarded mine openings within one of the oldest gold mining districts in America.

The impact of the Interior Department's interpretation is significant. While New Mexico's annual AML grant increased to over \$4 million, three million can only be spent on coal projects only and the remainder can be spent on either coal or non-coal projects. As a result, needed projects at dangerous abandoned hard rock mines have been delayed and funds diverted to lower priority abandoned coal mines.

This loss of flexibility also comes at a particularly significant time for New Mexico. For the past several years, the State has been using a variety of funding sources to conduct an inventory of abandoned uranium mines, many of which are located in areas occupied by Native Americans in northwestern New Mexico. The impacts of these uranium mines on the nearby residents, particularly the Navajo people, have received national attention and have been the subject of hearings before the House Oversight and Government Reform Committee. New Mexico is working cooperatively with the Navajo Nation and the U.S. EPA to coordinate work on abandoned uranium mines in areas near the Navajo Indian Reservation. With the new AML money available, we have a unique opportunity to finally address some of these sites which have caused great harm to the Navajo communities. With the Interior Department's restrictions, our options become much

more limited, because the money for non-coal projects is much more limited. We hope you will prevent that reduction in funds for eliminating hazardous non-coal risks.

H.R. 785 will allow New Mexico and other western states to address some of the highest priority threats to public health and safety from non-coal mines while continuing to address the inventory of priority coal mines. Allowing more funds to be spent on non-coal mines may also result in more jobs. Our experience has been that non-coal AML projects are much more likely to attract partners and additional funding thus increasing the size of the project and the number of jobs generated. The uranium mine assessment project mentioned above is an example. New Mexico began the project with limited SMCRA funds and has attracted private, state and other federal funds to more than triple the size of the project.

This legislation has broad support in New Mexico from the mining industry, the environmental community and public officials. At the 2010 New Mexico Legislative Session, both houses of the New Mexico Legislature passed Memorials that requested the Congress to expedite legislation to allow uncertified states to use SMCRA funds on non-coal abandoned mine reclamation. Both Memorials passed all Committees and full chambers without a single dissenting vote.

Mr. Chairman and members of the Committee, we thank you for this opportunity to present New Mexico's position on H.R. 785. We urge the Committee to correct the misinterpretation of SMCRA and restore the flexibility needed by the States. We look forward to working with the Committee in the future.