



HOUSE COMMITTEE ON  
**NATURAL RESOURCES**  
CHAIRMAN BRUCE WESTERMAN

**To:** Subcommittee on Energy and Mineral Resources Republican Members  
**From:** Subcommittee on Energy and Mineral Resources staff: Ashley Nichols ([Ashley.Nichols@mail.house.gov](mailto:Ashley.Nichols@mail.house.gov)), Rob MacGregor ([Robert.MacGregor@mail.house.gov](mailto:Robert.MacGregor@mail.house.gov)) and Rebecca Konolige ([Rebecca.Konolige@mail.house.gov](mailto:Rebecca.Konolige@mail.house.gov)) x59297  
**Date:** May 16, 2023  
**Subject:** Oversight budget hearing “*Examining the President’s FY 2024 Budget Request for the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement.*”

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The Subcommittee on Energy and Mineral Resources will hold an oversight budget hearing titled “*Examining the President’s FY 2024 Budget Request for the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement*” **on Tuesday, May 16, 2023, at 10:15 a.m. EDT in 1324 Longworth House Office Building.**

Member offices are requested to notify Lonnie Smith ([Lonnie.Smith@mail.house.gov](mailto:Lonnie.Smith@mail.house.gov)) by 4:30 p.m. on Monday, May 15<sup>th</sup>, if their Member intends to participate in the hearing.

**I. KEY MESSAGES**

- The actions of the Bureau of Land Management (BLM) under the Biden administration threaten the long-term viability of oil production on federal lands, increasing costs and jeopardizing future revenues to states and local communities. Instead of working with Congress to enact lasting and substantial reforms, the Biden administration has proposed a budget that is riddled with misplaced priorities justified under the guise of nebulous conservation and climate objectives.
- With real crises on BLM land, such as drought, wildfires, and lack of access, the BLM has moved away from its multiple use and sustained yield mandate to a preservationist, reduced access mindset.
- Preservationist policies that lock up our nation’s abundant resources will only exacerbate the historically devastating wildfire and drought crisis, rural economic decline, and the loss of access and enjoyment to large parts of our federal lands. The BLM should focus on its rangeland health, reducing the risk of wildfires, and ensuring it is carrying out its multiple use and sustained yield mandate.
- The BLM and the Office of Surface Mining, Reclamation and Enforcement (OSMRE) have major responsibilities in regulating hardrock and coal mining, as well as reclaiming abandoned mines. Significant oversight is needed to ensure transparent regulations of mining programs under these agencies, particularly the disbursement of new funding made available under the Infrastructure Investment and Jobs Act (IIJA).

## II. WITNESSES

- The Honorable Tracy Stone-Manning, Director, Bureau of Land Management, Washington, DC
- Ms. Glenda Owens, Deputy Director, Office of Surface Mining, Reclamation and Enforcement, Washington, DC

## III. BACKGROUND

Agency	FY 2022 Actual	FY 2023 Enacted	FY 2024 Requested	Change FY 2024 Request to FY 2023 Enacted
<b>Bureau of Land Management (BLM)</b>	\$1.43 billion	\$1.53 billion	\$1.67 billion	(+) \$140.51 million
<b>Office of Surface Mining Reclamation and Enforcement (OSMRE)</b>	\$12.39 billion	\$1.48 billion	\$1.59 billion	(+) \$105.17 million (+7.1%)

### Bureau of Land Management

The BLM, an agency of the Department of the Interior (DOI), manages 244 million acres of federal land. Most of this land is in the West. BLM manages lands for diverse purposes, including livestock grazing, energy and mineral development, and recreation. The agency also administers onshore federal energy and mineral resources generally.<sup>1</sup>

The fiscal year (FY) 2024 President’s Budget requested \$1.7 billion for the BLM to promote its multiple use and sustained yield mandate. The proposed budget is an increase of \$140.5 million above FY 2023 enacted funding. The budget requests \$304 million for the Land Resources account, which provides for integrated management of public land resources, including forestry, range, and cultural resources, as well as wild horses and burro management.<sup>2</sup> The budget requests \$230 million for Energy and Minerals Management (\$4 million less than FY 2023 enacted funding) which provides for oil and gas management and inspection activities, coal management, other mineral resource management and renewable energy.<sup>3</sup>

#### *Onshore Oil and Gas Program*

Federal onshore oil production totaled 428 million barrels during FY 2022, approximately 11 percent of total U.S. oil production, and Federal leases generated approximately \$7.6

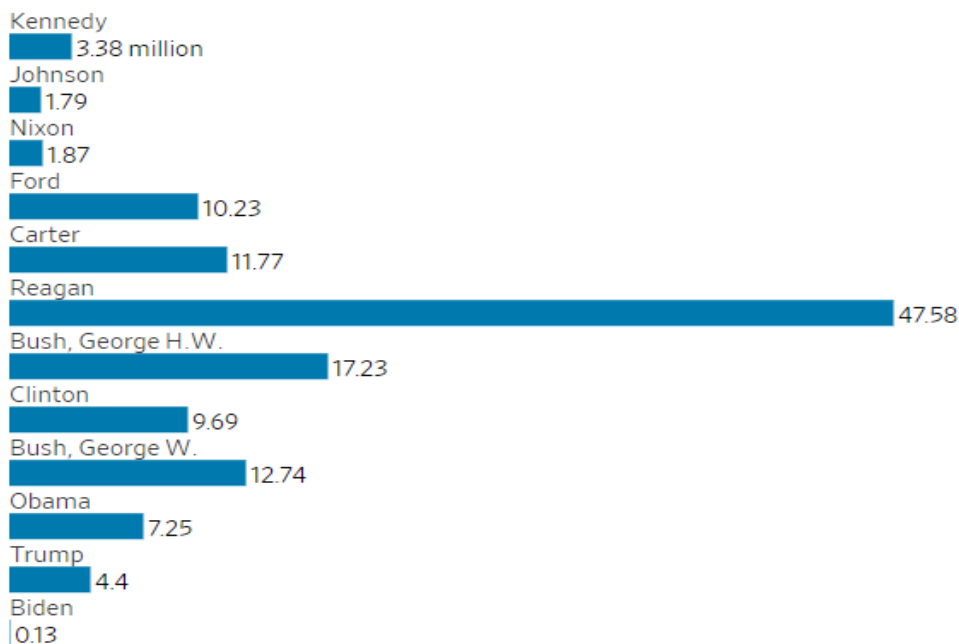
<sup>1</sup> Congressional Research Service, Bureau of Land Management: FY2023 Appropriations, March 3, 2023, <https://www.crs.gov/Reports/IF12187>.

<sup>2</sup> BLM, Budget in Brief, FY 2024, p. III-1 - III-7, <https://www.doi.gov/sites/doi.gov/files/fy2024-bib-blm-508.pdf.pdf>.

<sup>3</sup> *Id.*

billion in bonus bids, royalties, rents, and other revenues in FY 2022.<sup>4</sup> While the administration has attempted to take credit for this production, most, if not all of it has occurred on leases issued by previous administrations. In fact, the Biden administration has leased fewer acres for oil-and-gas drilling offshore and on federal land than any other administration in its early stages dating back to the end of World War II.<sup>5</sup>

**Federal acres leased for oil-and-gas production, first 19 months of administration**



Note: First terms only. Excludes National Petroleum Reserve in Alaska and Coastal Plain of the Arctic National Wildlife Refuge.

Sources: Bureau of Land Management; Bureau of Ocean Energy Management

The Mineral Leasing Act explicitly states that “lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary.”<sup>6</sup> In his first days in office, President Biden issued Executive Order 14008 which imposed an indefinite pause on new oil and natural gas leasing on U.S. federal lands and waters “pending completion of a comprehensive review.”<sup>7</sup> On June 15, 2021, U.S. District Judge Terry A. Doughty placed an injunction on DOI’s unlawful moratorium and ordered the agencies to restart the leasing process.<sup>8</sup> In response, the Biden administration appealed the decision and continued to delay scheduling lease sales.<sup>9</sup>

<sup>4</sup> BLM, Budget Justifications and Performance Information Fiscal Year 2024, P. V-88, <https://www.doi.gov/sites/doi.gov/files/fy2024-blm-greenbook.pdf-508.pdf>.

<sup>5</sup> Timothy Puko and Anthony DeBarros, Federal Oil Leases Slow to a Trickle Under Biden, Wall Street Journal, September 4, 2022, <https://www.wsj.com/articles/federal-oil-leases-slow-to-a-trickle-under-biden-11662230816>

<sup>6</sup> 30 U.S. Code § 226.

<sup>7</sup> Exec. Order 14008, 86 Fed. Reg. 19, 7619 (Jan. 27, 2021).

<sup>8</sup> Partlow, Joshua and Eilperin, Juliet. Louisiana judge blocks Biden Administration’s oil and gas leasing pause.

<https://www.washingtonpost.com/climate-environment/2021/06/15/louisiana-judge-blocks-biden-administrations-oil-gas-leasing-pause/>

<sup>9</sup> Valerie Volcovici. “Biden administration appeals federal court decision to block oil, gas leasing pause.” Reuters. August 16, 2021, <https://www.reuters.com/world/us/biden-administration-appeals-federal-court-decision-block-oil-gas-leasing-pause-2021-08-16/>

In response to the BLM's failure to follow the law, the Inflation Reduction Act (IRA) requires DOI to offer at least two million acres or 50 percent of the acreage for which expressions of interest (EOI) have been submitted for lease every year for the next decade as a prerequisite for approving permits for wind-power and solar-power development on federal lands.<sup>10</sup> However, the BLM is currently attempting to circumvent this mandate by counting acreage considered in the process but not offered in an oil and gas lease sale<sup>11</sup> rather than total submitted EOIs.<sup>12</sup>

The BLM is also lagging in approving applications for permits to drill (APDs). Clearing the APD backlog would increase near-term energy production on federal lands and drive down energy prices for all Americans. In FY 2022, the BLM approved an average of 233 drilling permits per month. In contrast, the BLM was approving nearly 400 drilling permits monthly in FY 2020 under President Donald Trump.<sup>13</sup>

The BLM has recently taken new regulatory actions that could further impede oil and gas production on federal lands. These include a new supplemental environmental assessment (EA) analyzing greenhouse gas emissions that could result from 3,600 oil and natural gas leases sold between 2015-2020,<sup>14</sup> seven new Instruction Memoranda related to leasing on federal lands,<sup>15</sup> and a proposed rule regulating emissions from oil and natural gas production on federal lands.<sup>16</sup> Additionally, the BLM is working on a rule that would alter the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production on federal lands.<sup>17</sup>

The budget request would continue the BLM's war on domestic energy production and small businesses by requesting a new onshore inspection fee, repealing the enhanced oil recovery credit and the marginal well credit, and by proposing to end expensing of intangible drilling costs and the use of percentage depletion with respect to oil and gas development.<sup>18</sup> The President's Budget does not explain how BLM will address the permitting backlogs for oil and gas drilling permits, which stood at 5075 pending permits in the latest published report at the end of January.<sup>19</sup>

### *Renewable Energy Program*

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<sup>10</sup> Public Law 117-169, Sec. 50265.

<sup>11</sup> Kathleen Sgamma, Testimony before House Committee on Natural Resources. February 8, 2023.

[https://naturalresources.house.gov/uploadedfiles/testimony\\_sgamma.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_sgamma.pdf)

<sup>12</sup> Bureau of Land Management, IM 2023-006, IMPLEMENTATION OF SECTION 50265 IN THE INFLATION REDUCTION ACT FOR EXPRESSIONS OF INTEREST FOR OIL AND GAS LEASE SALES, November 21, 2022, <https://www.blm.gov/policy/im-2023-006>

<sup>13</sup> <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/permitting/applications-permits-drill>

<sup>14</sup> BLM REQUESTS PUBLIC INPUT ON REVISED GREENHOUSE GAS LEASING ANALYSIS, Nov. 9, 2022, <https://www.blm.gov/press-release/blm-requests-public-input-revised-greenhouse-gas-leasing-analysis>

<sup>15</sup> The BLM issues updated oil and gas leasing guidance, [https://www.blm.gov/sites/default/files/docs/2022-11/Fact%20Sheet\\_Oil%20and%20Gas%20Leasing%20Guidance\\_%2011.21.22.pdf](https://www.blm.gov/sites/default/files/docs/2022-11/Fact%20Sheet_Oil%20and%20Gas%20Leasing%20Guidance_%2011.21.22.pdf)

<sup>16</sup> 87 FR 73588, <https://www.federalregister.gov/documents/2022/11/30/2022-25345/waste-prevention-production-subject-to-royalties-and-resource-conservation>

<sup>17</sup> Office of Information and Regulatory Affairs, Revision of Existing Regulations Pertaining to Fossil Fuel Leases and Leasing Process, RIN: 1004-AE80, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1004-AE80>

<sup>18</sup> Office of Management and Budget, Budget of the U.S. Government: Fiscal Year 2024, [https://www.whitehouse.gov/wp-content/uploads/2023/03/budget\\_fy2024.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/03/budget_fy2024.pdf)

<sup>19</sup> Application for Permit to Drill Status Report: 1/1/2023 to 1/31/2023, Bureau of Land Management, <https://www.blm.gov/sites/default/files/docs/2023-02/FY%202023%20APD%20Status%20Report%20January.pdf>

The Biden administration’s budget prioritizes renewable energy development above other forms of energy development. Unfortunately, the National Environmental Policy Act (NEPA) process has become a significant barrier for energy development of all kinds, including renewable energy and transmission projects. In addition, inflation and supply chain issues continue to push up the cost of materials needed to build renewable projects.<sup>20</sup> The current permitting process is filled with repetitive, duplicative assessments and prolonged processing, making it difficult for developers to plan, finance, and build projects efficiently.<sup>21</sup> In December, DOI announced plans to create a programmatic environmental impact statement (PEIS) to update the 2012 Western Solar Plan and help with NEPA permitting issues.<sup>22</sup> The 2012 Western Solar Plan included 6 states and created 17 priority solar energy zones consisting of 285,000 acres. The updated PEIS, expected this summer, aims to increase the amount of acreage available and expand the Program to 11 western states.<sup>23</sup>

The BLM’s budget request includes \$72.5 million for the Renewable Energy Management program and an increase of almost \$32 million from FY 2023 enacted.<sup>24</sup> According to the BLM’s budget justification, the increase will support siting, leasing, processing rights-of-way applications, and oversight of renewable energy projects and transmission lines connecting to renewable energy projects.<sup>25</sup> The money would also be used to hire 81 full time employees in BLM headquarters, state and field offices, and the Renewable Energy Coordination Offices.<sup>26</sup>

Unfortunately, the budget does not include any provisions to fix our nation’s broken permitting process under NEPA and simply aims to throw more money at the problem. House Republicans passed provisions in H.R. 1, the “*Lower Energy Costs Act*”, that would streamline the NEPA process for all forms of energy, including for renewables and transmission.

### *Rangeland Health*

The DOI budget requests \$1.93 billion for the Wildland Fire Management Program, a 9.5 percent increase compared to FY 2023 enacted levels of \$1.86 billion. The majority of this funding is for Preparedness and Suppression Operations (including the Wildfire Suppression Operations Reserve Fund), which totals \$1.33 billion. Of this, \$72 million is

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<sup>20</sup> Offshore wind project pipeline could power 20M homes — report: But the American Clean Power Association in a new market report also noted the current challenges, such as rising costs, for the industry, Heather Richards,

<https://subscriber.politicopro.com/article/eenews/2023/05/04/offshore-wind-project-pipeline-could-power-20m-homes-report-00095294>

<sup>21</sup> Geothermal Rising, Letter to Secretary Debra Haaland, March 18, 2021, <https://geothermal.org/resources/geothermal-rising-letter-addressing-geothermal-permitting-public-lands>.

<sup>22</sup> Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Utility-Scale Solar Energy Planning and Amend Resource Management Plans for Renewable Energy Development, Bureau of Land Management,

<https://www.federalregister.gov/documents/2022/12/08/2022-26659/notice-of-intent-to-prepare-a-programmatic-environmental-impact-statement-to-evaluate-utility-scale>

<sup>23</sup> *Id.*

<sup>24</sup> BLM, Budget in Brief, FY 2024, <https://www.doi.gov/sites/doi.gov/files/fy2024-bib-blm-508.pdf.pdf>

<sup>25</sup> BLM, Budget Justifications and Performance Information Fiscal Year 2024, P. V-101, <https://www.doi.gov/sites/doi.gov/files/fy2024-blm-greenbook.pdf-508.pdf>.

<sup>26</sup> *Id.*

identified for a legislative proposal to provide a permanent increase in pay for wildland firefighters.<sup>27</sup>

Our nation's brave wildland firefighters deserve better and fair pay. However, the budget request fails to identify any long-term funding sources to support the proposed pay increase. Further, the budget fails to pair pay reforms with the rangeland and forest management reforms necessary to protect wildland firefighters and our natural resources by decreasing the scale and severity of fires on the landscape.

The DOI budget requests substantial increases in funding for hazardous fuels reduction without committing to treating any additional acreage of fire-prone lands. The budget justification for Wildland Fire Management requests \$293.27 million for Fuels Management to support treatments on approximately 2 million acres of land. Concerningly, despite requesting a 29.2 percent increase in the Fuels Management account over FY 2022 levels, the DOI is planning to treat the exact same amount of acreage as it did in FY 2022.

One of the best tools the BLM has to manage its rangeland health, is livestock grazing. The BLM administers nearly 18,000 permits and leases held by ranchers who graze their livestock on 155 million acres of federal land. Permits and leases are generally 10-years and often renewable. Ranchers contribute to rangeland improvements such as improving watershed conditions and enhancing wildlife habitat.<sup>28</sup>

### *Proposed Public Lands Rule*

On April 3, 2023, the BLM published in the Federal Register a proposed rule, "Conservation and Landscape Health" with a 75-day comment period. The proposed rule elevates conservation as a "use" within the Federal Land Policy and Management Act (FLPMA) multiple-use framework without Congressional authority. The BLM will pursue this through so-called conservation leases for both protection and restoration activities. This proposed rule would fundamentally change the way the BLM carries out its multiple use and sustained yield mandates. There are concerns the administration will determine uses such as grazing, energy production, and recreation are incompatible with a conservation lease or areas identified as "intact landscapes."<sup>29</sup>

Even after briefings to Committee staff provided by BLM staff, there are still unanswered questions about the implementation of such a rule. BLM staff could neither provide clear answers to how conservation leases would be developed or if other multiple uses could occur on conservation leases, nor could they provide direction on how conservation leases would impact Resource Management Plans (RMPs) or interact with current leases and leaseholders.<sup>30</sup> Clear answers are needed from BLM on their intent and implementation of

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<sup>27</sup> DOI, FY 2024 Budget Justification, "Wildland Fire Management," <https://www.doi.gov/sites/doi.gov/files/fy2024-wfm-greenbook.pdf-508.pdf>.

<sup>28</sup> BLM, Livestock Grazing on Public Lands, Accessed May 8, 2023, <https://www.blm.gov/programs/natural-resources/rangelands-and-grazing/livestock-grazing>.

<sup>29</sup> Department of the Interior, Bureau of Land Management, "Conservation and Landscape Health, April 3, 2023, <https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health>

<sup>30</sup> BLM Staff Briefings provided to Committee Staff, Notes on file with Committee, April 12 and May 5, 2023.

the proposed rule as drafted and more time is needed to comment on this rule given the extensive amount of stakeholder that will be impacted by it.

### *Land Grab*

President Biden recently designated several new national monuments using authorities under the Antiquities Act of 1906, most recently new monuments were designated in Colorado<sup>31</sup> and Nevada<sup>32</sup>. Alarmingly, this trend shows no signs of slowing down. The BLM budget requests a \$3.0 million increase for the “Increasing Representation in our Public Lands initiative, which will support recent or potential new designations that preserve important places.”<sup>33</sup>

In comparison, the entire BLM Rangeland Management and Public Domain Forestry Management accounts only request a \$2.4 million and \$1.4 million increase, respectively. These accounts are vital to sustaining the BLM’s multiple use mandate, promoting rangeland and forest health, and promoting economic opportunities such as grazing. Instead of focusing on locking up new lands, the BLM should focus on carrying out its multiple use and sustained yield mission.

### *Misplaced Priorities*

The budget is riddled with examples of misplaced priorities justified under the guise of nebulous conservation or climate goals. For example, the BLM is proposing more than 17 percent, or \$7 million, of its budget for Deferred Maintenance and Capital Improvements be used to install electric vehicle charging infrastructure.<sup>34</sup> The BLM should focus on its rangeland health, reducing the risk of wildfires, and ensuring it is carrying out its multiple use and sustained yield mandate.

### *Coal and Hardrock Mining*

BLM also regulates hardrock (non-fuel) mining on federal lands, including production of critical minerals. While no recommendations for streamlining the permitting process for new hardrock mines are included in the budget request, DOI continues to work on a report from the Interagency Working Group on mining reform, which is expected to include policy recommendations for new hardrock mining on federal lands. As the regulating agency, BLM would be the primary agency carrying out most of whatever new policies result from the Interagency Working Group. The Committee urges the administration to carefully consider the major demand increases anticipated for mineral commodities when making such recommendations.

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<sup>31</sup> The White House, FACT SHEET: President Biden Designates Camp Hale – Continental Divide National Monument, October 12, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/12/fact-sheet-president-biden-designates-camp-hale-continental-divide-national-monument/>.

<sup>32</sup> The White House, FACT SHEET: President Biden Designates Avi Kwa Ame National Monument, March 21, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/fact-sheet-president-biden-designates-avi-kwa-ame-national-monument/>.

<sup>33</sup> BLM, Budget in Brief, FY 2024, <https://www.doi.gov/sites/doi.gov/files/fy2024-bib-blm-508.pdf.pdf>.

<sup>34</sup> BLM, Budget in Brief, FY 2024, <https://www.doi.gov/sites/doi.gov/files/fy2024-bib-blm-508.pdf.pdf>.

Additionally, the Biden administration has notably taken action to block and even preemptively reject promising mining proposals on federal lands. For example, the Biden administration canceled<sup>35</sup> the two decades-old mineral leases held by Twin Metals Minnesota in January 2022, and simultaneously began the withdrawal process of over 225,000 acres of mineral-rich land in the same area.<sup>36</sup> The finalized withdrawal went into effect on January 31, 2023.<sup>37</sup> This withdrawal prohibits the new extraction of any mineral – including copper, nickel, cobalt, platinum, and iron ore – in 225,504 acres of the Superior National Forest for 20 years. When questioned during a recent hearing before the House Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies, Secretary Haaland testified that she did not know what minerals are located in the withdrawal area.<sup>38</sup>

## **Office of Surface Mining Reclamation and Enforcement**

Federal coal mining and associated mine reclamation is regulated by the Surface Mining Control and Reclamation Act (SMCRA) of 1977 (30 U.S.C. 1251 et seq.) and overseen by the Office of Surface Mining Reclamation and Enforcement (OSMRE). The BLM is responsible for coal leasing on over 570 million acres of federally owned land.<sup>39</sup> OSMRE is also the primary regulator of coal mining operations in the U.S. However, states and tribes may assume the role of primary regulator if they are able to comply with all requirements under SMCRA in managing their coal regulatory program.<sup>40</sup>

### *Abandoned Mine Lands (AML)*

The Abandoned Mine Land (AML) program administered by the OSMRE received significant new funding for abandoned coal sites in the IJA. The IJA reauthorized the coal mine reclamation fee through September 30, 2034, and lowered the fee amounts by 20 percent, beginning in FY 2022. The IJA also provided \$11.3 billion in new funding for reclamation grants to states and tribes. While this new funding presents an opportunity to remediate coal AML sites across the nation, confusing and conflicting guidance has emerged from DOI and OSMRE that has raised concerns from the states about how to best select reclamation projects. Further, the first round of IJA funds took a full year to go out to the states and tribes, demonstrating that new inefficiencies associated with the additional funding are being generated at the agency. Given the large amount of new funding, this issue will require significant oversight by this Committee to ensure it is distributed in a timely and predictable manner.

The FY 2024 OSMRE budget also provides \$174.6 million to the discretionary Abandoned Mine Reclamation Fund and \$135 million to the Abandoned Mine Land

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<sup>35</sup> Decision of Tommy Beaudreau, Deputy Secretary of the Interior, January 26, 2022, [https://www.blm.gov/sites/blm.gov/files/docs/2022-01/2022.01.26%20Twin%20Metals%20Lease%20Cancellation%20Decision\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/docs/2022-01/2022.01.26%20Twin%20Metals%20Lease%20Cancellation%20Decision_0.pdf).

<sup>36</sup> U.S. Department of the Interior, “Biden Administration Takes Action to Complete Study of Boundary Waters Area Watershed,” Press Release, October 20, 2021, <https://www.doi.gov/pressreleases/biden-administration-takes-action-complete-study-boundary-waters-area-watershed>.

<sup>37</sup> 88 FR 6308

<sup>38</sup> Office of Guy Reschenthaler. Press Release. <https://reschenthaler.house.gov/media/press-releases/reschenthaler-grillsbidens-interior-secretary-on-green-new-deal-agenda-deepening-americas-dependence-on-china> March 28, 2023.

<sup>39</sup> U.S. Bureau of Land Management, National Coal Statistics Table, <https://www.blm.gov/programs/energy-and-minerals/coal/coal-data>.

<sup>40</sup> 30 CFR Chapter VII.



Economic Revitalization (AMLER) grant program. The discretionary budget request includes a total increase of \$11.29 million, focused primarily on administering the AML Reclamation Fund and regulation and technology purposes. Mandatory spending in this budget totals \$1.29 billion, which includes reclamation grants to states and tribes, as well as for United Mine Workers of America (UMWA) health benefits and the 1974 UMWA Pension Plan.

In addition to coal AML, \$3 billion was authorized (but not appropriated) to establish a new hardrock AML program at BLM for non-coal sites in the IIA.

### *Active Coal Mining*

The OSMRE also regulates active coal mining, with the BLM responsible for leasing federal coal under the Mineral Leasing Act.

Executive Order (EO) 14008 placed a moratorium on new onshore energy leasing, including coal. While a June 15, 2021, injunction lifted the moratorium on oil and gas, the administration continued its ban on coal leasing. Further, on August 15, 2022, a federal judge fully reinstated the coal moratorium on new leasing.<sup>41</sup> On May 1, 2023, the administration announced their intent to initiate an environmental impact statement to evaluate the impacts of maintaining or revoking the coal moratorium.<sup>42</sup>

Even expansions of existing coal operations which are not subject to the moratorium have struggled to acquire needed authorizations from the Biden administration. For example, a metallurgical (steelmaking) coal operator in Alabama, Warrior Met, has still not received final approval for a lease-by-application even though scoping for this application began on August 10, 2014.<sup>43</sup> Other necessary authorizations, such as federal mine plan amendments at existing operations, have experienced serious delays under this administration for unknown reasons. The Black Butte mine in Wyoming, for instance, submitted a mine plan amendment to OSMRE in 2021 that has yet to be approved by DOI.<sup>44</sup>

### *Rules in Development*

On April 25, 2023, OSMRE published a proposed rule titled, “Ten-Day Notices and Corrective Action for State Regulatory Program Issues.”<sup>45</sup> This rule would modify existing federal regulations for correction of violations in coal mining states with delegated authority, OSMRE’s handling of citizens’ complaints and requests for federal inspections, and federal oversight and takeover of state regulatory programs under Title V of SMCRA. States with delegated authority have strong concerns about this rule

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<sup>41</sup> Clark Mindock, “Judge reinstates Obama-era coal-leasing ban,” Reuters, August 15, 2022, <https://www.reuters.com/legal/litigation/judge-reinstates-obama-era-coal-leasing-ban-2022-08-13/>

<sup>42</sup> 88 FR 26588.

<sup>43</sup> [https://www.blm.gov/sites/default/files/docs/2022-02/ALES-55797%20BLM%20ES%202022\\_0.pdf](https://www.blm.gov/sites/default/files/docs/2022-02/ALES-55797%20BLM%20ES%202022_0.pdf)

<sup>44</sup> Letter to Secretary Deb Haaland, Department of the Interior, from Governor Mark Gordon, State of Wyoming, April 25, 2023.

<sup>45</sup> 88 FR 24944.

usurping their exclusive authority over their own state programs. Comments on the rule are due on Monday, June 26, 2023.

The states also have concerns about an anticipated rulemaking on dam safety, specifically in regard to Emergency Action Plans (EAPs) and After Action Reports (AARs) for dams.<sup>46</sup> SMCRA does not grant OSMRE authority over dam regulatory functions at the state level, so adoption of a national rule on dam safety without meaningful engagement with the states could pose conflicts with or duplication of existing state regulations. There are safety concerns as well, as layering a national rule on top of state regulations would inevitably result in a certain level of inefficiency and inconsistency, which could pose real danger in the case of an emergency.

Both of these rules will require ongoing Congressional oversight prevent executive overreach and erosion of state-delegated authority.

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<sup>46</sup> Letter to Acting Director Glenda Owens, Office of Surface Mining Reclamation and Enforcement, from Thomas Clarke, Executive Director, Interstate Mining Compact Commission, April 26, 2023.