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State of Alabama Abandoned Mine Land Program Comments on Draft IIJA Guidance

- **Pg. 1, Overview** – “In accordance with Executive Order 14008 States and Tribes are encouraged to prioritize projects that equitably provide funding under the Justice 40 Initiative towards meeting the goal that 40 percent of the overall benefits flow to disadvantaged communities.” Alabama has historically selected projects based on the hazard to human health and safety as required by SMCRA. How does the goal of this executive order align with SMCRA requirements? Communities that have legacy AML features are typically disadvantaged communities who receive inherent benefits by having the AML features remediated. The last paragraph states, “OSMRE will consider rulemaking to establish requirements and obligations related to application procedures, allowable uses of funds and reporting program activities and outcomes.” I would encourage OSMRE to proceed cautiously with rulemaking. Perhaps the first 5-year grant period of performance should be evaluated to allow both the states and OSMRE to adequately gauge what is/isn’t working with the procedures detailed in the final guidance prior to enacting a rule.
- **Pg. 2, regarding eligible projects and prioritization** – The draft guidance clearly says funding may only be spent on coal reclamation projects, yet later in the document it requests states to report on economic benefits. The Infrastructure Investment and Jobs Act (IIJA) is not the Abandoned Mine Land Economic Revitalization (AMLER) Program, nor should it be viewed as AMLER. This section goes on to detail how projects are prioritized per SMCRA P1, P2, P3, etc. The IIJA does not alter how SMCRA prioritizes project selection. If IIJA projects are to be prioritized per SMCRA guidelines, then DOI should consider modeling the processes and procedures that have shown historic success via the traditional Title IV AML program.
- **Pg. 3** – “OSMRE will consult with each State and Tribe receiving funds under the IIJA to identify which updates to the grantee’s Reclamation Plan, if any, are necessary to ensure to Plan’s compliance with the IIJA.” There is a formal process for requiring states to amend individual reclamation plans. These plans are a Title IV requirement of SMCRA section 405 part 884. Based on the inefficiency of OSMRE’s informal AMLER vetting process, the State of Alabama AML Program is extremely leery of engaging OSMRE in any additional “informal” exercises not required by SMCRA. If deficiencies are identified in state reclamation plans per SMCRA, OSMRE should expect to engage in a “formal” process that identifies deficiencies as detailed in 30 CFR Chapter VII, Part 884, §884.15. There are no specific requirements in the IIJA that provide reason to require states to update their reclamation plan strictly for IIJA funding. If a state plan is deficient and explicitly excludes a particular type of project (i.e. P3), then I could see the requirement to update if that state wants to use the funding for that type of project. Otherwise, it seems like an unnecessary process that will bog down an agency that is already experiencing inefficiency and hinder efforts to get the IIJA funding on the ground ASAP as Congress intended.

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- **Pg 3 cont'd** – The draft guidance states, “Under Section 40701(f) of the IIJA, States and Tribes **should** prioritize projects that provide employment to current and former employees.” This is not feasible or possible. Alabama is a low-bid state per State of Alabama bid law. AML projects are prioritized P1, P2, P3 under SMCRA. It is **impossible** to know during project selection which contractor will be awarded low-bid and what the status of their employees are until each bid is awarded. AML projects are selected based on the hazards posed by the danger of the AML feature per SMCRA. After selection, projects are then designed, NEPA analysis conducted, and Authorization to Proceed requested from OSMRE, prior to going out for bid and contractor selection.

Pg. 3, regarding DOI “commencing notice and comment rulemaking, as necessary to further implement Section 40701(f) to provide additional guidance as to its scope.”

– This encouragement to prioritize projects that provide opportunities to current and former miners is a direct conflict with state bid law. It would be an extremely heavy lift to try to change state bid law legislatively to comply. The only priority SMCRA provides is based on danger to public safety, nothing else. The IIJA funding may only be spent on coal reclamation projects and is intended to eliminate safety hazards remaining from legacy mining activities which have a standard “prioritization structure” outlined in SMCRA and the OSMRE AML-1 Inventory manual. Is this guidance intending that state AML programs give priority to projects based on miner preference over safety hazard? That would be in direct conflict to SMCRA.

Bottom or Pg. 3, regarding the Justice40 Initiative – We cannot implement J40 measures if we do not have any guidance from OSMRE on what is required to comply. J40 measures cannot change the way projects are prioritized and selected as required by SMCRA. The AMLER Program that Alabama has participated in since 2017 was identified as a PILOT for J40 and we have not received ANY guidance into what is required. Now we must apply it to the whole of the IIJA? Perhaps we should implement J40 requirements for the AMLER program and evaluate efficacy prior to enacting them across the board.

- **Pg. 4, list of encouraged activities** – Many of these encouragements may be difficult to achieve when AML programs select projects per the prioritization guidelines set forth by SMCRA, especially “utilizing procurement processes that incentivize AML contractors to hire miners.” The guidance document states in this section, “IIJA AML funds may not be used, directly or indirectly, to support or oppose union organizing,” yet later in the guidance it seems to encourage states to use a unionized work force which seems in direct contradiction to this section.
- **Pg. 4, Section IV, regarding BIL AML Grants** – states the first grant distribution will occur by the end of 3rd quarter of FY 2022. If states do not receive the first allotment of funding until the end of the 4th quarter of FY 2022, will the 15-year period be pushed back by a year? The majority of FY 2022 has already passed, and states still don’t have the ability to apply for the grant. Regarding the one-time no-cost extension of the grant, it would be preferable to the state program to roll-forward remaining grant allocations into a single grant at the end of the 5-year period as opposed to managing multiple “open” grants.
- **Pg. 5 Section IV** states that a sample template of the grant application for IIJA AML grant funding is attached. I do not see that as part of the guidance document. Alabama prefers DOI/OSMRE stick to a single grants process with IIJA being tracked as a separate stream of

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funding similar to fee-based grants, AMLER, AMD set-aside etc. This will alleviate the burden of managing separate grant periods/reports, etc.

- **Pg. 5 Section IV cont'd; regarding items AML programs should include in grant applications:**

- A description of each proposed project to be funded during the grant period of performance; This information is IMPOSSIBLE to predict for a 5-year grant. AML inventories are fluid, and many circumstances can affect how/when a project is completed which results in the projects shifting up/down in schedule and priority. Any list of projects provided at this stage would be functionally useless and result in endless grant amendments burdening both state programs and OSMRE grant administrators.
- A description of the state and Tribe's prioritization process or ranking system for the selection of each proposed project; If states are to utilize the IJJA funding for coal reclamation, Alabama will continue to utilize the priority guidance set forth in SMCRA and AML-1.
- A statement of the estimated benefits that will result from each project; IMPOSSIBLE to predict. Reclamation is inherently beneficial and eliminates extreme dangers to public health and safety posed by legacy coal mine features. The IJJA does not provide a funding mechanism for evaluating economic or community benefits nor is OSMRE or state AML programs equipped to assess these.
- A statement of how the State or Tribe will prioritize projects employing current or former employees of the coal industry; IMPOSSIBLE. Alabama has a state bid law that does not allow this preference. We can require contractors to provide the information, but this encouragement does not supersede the State low-bid process.
- Plans for promoting workforce training and development, including how activities encouraged under Section III will be implemented, if applicable, along with the names of potential partners to support recruiting and training efforts, including community colleges, workforce partners, community-based groups, and unions; IMPOSSIBLE to predict at the time of grant application what project partners may participate at the project level. Additional guidance is needed for what the expectation is for state AML programs regarding this topic. The IJJA provides funding for coal reclamation projects, and this seems outside the scope of that mission.
- Any linkages to economic redevelopment opportunities created by carrying out the proposed projects; Similar to the AMLER category B projects, AML reclamation can create conditions favorable for economic development but it is IMPOSSIBLE to predict the economic impact of any particular reclamation at the time of grant application. How are states to fund this assessment as it is outside the scope of coal mine reclamation?
- A description of how local communities provided input into the selection of projects to be funded; Prior to ATP from OSMRE, state AML programs are required to solicit public comment on each project. It is IMPOSSIBLE to solicit public input on project selection at the time of grant application.
- A description of how the grantee will address environmental justice issues within coalfield communities; There is currently NO GUIDANCE from OSMRE on how state participants in the AMLER program are expected to do this. DOI should consider implementing the PILOT for J40 prior to enacting guidance for the larger IJJA to determine what is/isn't working. Elimination of the safety and environmental hazards posed by AML features has inherent benefit to the associated communities. Incorporation of AML inventory database information as a layer in the J40 screening tool would assist in showing communities where AML reclamation is benefiting.
- Details of how the grantee will identify and address any disproportionate burden of adverse human health or environmental effects of coal AML problems on disadvantaged communities, communities of color, low-income communities, and Tribal and Indigenous communities; Similar

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to above comment: Incorporation of AML inventory database information as a layer in the J40 screening tool would assist in showing communities where AML reclamation is benefiting.

- A description of whether and to what extent the proposed projects will reduce greenhouse gas emissions, particularly methane emissions; This is impossible to measure and provide meaningful analysis. AML sites that “may” have methane emissions could change based on season, weather, barometric pressure etc. Without long-term monitoring pre- / post AML reclamation, it would be extremely difficult or impossible to provide meaningful data on this.
- Estimated costs for each project to be completed using the IIJA AML grant funding. If IIJA AML funds will be leveraged with other funding sources, such as AML-fee based grants, include this information. Alabama’s AML Program uses a five-year rolling average of our construction costs to provide cost estimates as part of the AML-1 supplemental documentation. Cost estimates are included when the project is entered into e-AMLIS and should not be required as part of the grant application. As stated before, any potential project list provided at the time of grant application will be functionally useless. Alabama’s IIJA allocation is approximately 5X our historic fee-based grant so it’s hard to envision we would be seeking leveraged funds from outside partners, but this information could be reported where/when applicable.
- Proposed performance measurement (see section X). Performance measures should stick to quantifiable metrics reported in e-AMLIS. Many of the items in section X are not quantifiable or reportable. DOI/OSMRE needs to modify these metrics based on things measurable and quantifiable through AML reclamation construction.

- **Pg. 7, Section VI, regarding Public Engagement** – This section needs clarification. The State of Alabama already has processes in place to engage the public on proposed AML projects. If required in the guidance and/or in grant reporting, DOI/OSMRE needs to clarify what additional steps state AML programs should take to engage the public. Public engagement should not affect project prioritization or selection outside of the criteria set forth by SMCRA.
- **Pg. 7, Section VII, regarding Enhanced AML Inventory System (e-AMLIS)** – OSMRE/DOI should consider additions to e-AMLIS to track specific metrics established by the IIJA that they expect states to track and report, particularly those related to J40.
- **Pg. 8 Section VIII, regarding compliance with NEPA** – “In accordance with section 8.5.2.1 of OSMRE’s NEPA Handbook, State and Tribal AML Programs must ensure that all connected actions, regardless of the funding source or who proposes them, are analyzed in a single NEPA document. Additionally, a project that includes multiple phases must be reviewed in a single NEPA document.” This is completely impractical and likely IMPOSSIBLE. State AML programs cannot predict which AML projects will be split into multiple phases based on funding so we can analyze ALL phases at once in addition to seeing into the future ALL other connected actions regardless of funding source or parties undertaking said actions. Prior to requesting an ATP as part of the environmental assessment, AML programs assess cumulative impacts but can only utilize available information regarding “connected actions.” Projects are often designated into additional phases based on residential development that occurs post-reclamation. State AML programs have no mechanism to predict when future residential development may occur thereby raising the safety priority of remaining features resulting in the need for additional phases of reclamation.

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- **Pg 9, Section IX, regarding Project Authorization** – “For projects or aggregated projects in excess of \$1 million, States or Tribes may provide a certification that a Project either uses a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). “ This requirement will be applicable to most projects for states receiving substantially increased sums of money and in Alabama a unionized project workforce does NOT exist. Encouragement of unionized workforce may result in smaller local contractors not bidding on AML work funded by the IJA and indirectly reduce the positive economic benefit to the local community. The ability to comply with this requirement of the guidance is going to be tremendously difficult for the majority of states but easy to report on as it doesn’t exist. This section also seems contradictory to the Section III statement that “IJA AML funds may not be used, directly or indirectly, to support or oppose union organizing.”
- **Pg. 10-11, Section X, regarding BIL AML Performance measures and reporting** – This section is flawed in its entirety. OSMRE needs to utilize metrics that have been historically used as part of e-AMLIS. Performance metrics need to be measurable and quantifiable for state AML programs to capture them. This section leads to a bigger question – who is going to review these projects and make determinations? Will this be handled at the field office level or are we going to have to go all the way to HQ similar to the informal “vetting” of AMLER projects (which has been time consuming and inefficient and has resulted in significant delay)? AL AML would like to see a clearly defined process (flowchart) with **timeframes** and for OSMRE personnel to review. AL AML would like to see a template for IJA reporting. This entire section is too vague and frankly it is incomplete. We cannot provide input/comments on information that is not provided. AL AML encourages DOI/OSMRE to rely on state expertise and discretion in developing realistic quantifiable/measurable metrics that are applicable to coal reclamation projects and what the IJA funding is intended to accomplish. The socio-economic benefits being considered for project selection and prioritization, which then requires project reporting, are non-starters.

In consideration of revisions to this draft guidance, AL AML would prefer that DOI/OSMRE rely on the proven historic processes and procedures utilized by the state AML programs to implement our fee-based grants that have allowed us to achieve 40+ years of success towards the primary mission of Title IV of SMCRA, which is to ***promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977, and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.***

Respectfully,

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