

June 13, 2022

Secretary Deb Haaland
Department of Interior
1849 C Street, N.W.
Washington DC 20240

Deputy Director Glenda Owens
Office of Surface Mining Reclamation and Enforcement
1951 Constitution Ave., NW
Washington, DC 20240
getinfo@osmre.gov

Dear Secretary Haaland and Deputy Director Owens:

Appalachian Citizens' Law Center, Appalachian Voices, Jobs with Justice - East Tennessee, Sierra Club, Statewide Organizing for Community eMpowerment, The Alliance for Appalachia, The Ohio River Valley Institute, and West Virginia Rivers Coalition are writing to offer our comments regarding the Draft Guidance released May 23, 2022 for the abandoned mine land (AML) funding made available under the Bipartisan Infrastructure Law (BIL). We applaud this historic investment in our nation's coal mining communities and appreciate the opportunity to provide comments and recommendations regarding the Draft Guidance developed by the Department of Interior (Department).

Collectively, our organizations work directly with and in many of the communities impacted by abandoned coal mines, providing us with decades of experience regarding the need for and opportunity in abandoned mine land reclamation.

- **Appalachian Citizens' Law Center** (ACLC) is a public interest law firm and nonprofit advocacy organization that addresses the legacy costs of coal mining. ACLC is located in Whitesburg, Ky and primarily serves Central Appalachia.
- **Appalachian Voices** is a regional nonprofit organization focused on energy and environmental justice issues in the Southeast. Our staff works to address the impacts of surface coal mining in the Central Appalachian states of Tennessee, Kentucky, Virginia, and West Virginia. We work with numerous partners across the country to create a unified national strategy regarding coal mining regulation. The team also has extensive field experience, which provides us with knowledge of many community health and environmental issues within the Central Appalachian region, as well as the economic challenges facing communities experiencing the decline of the coal industry.

- **The Ohio River Valley Institute (ORVI)** is a think tank focused on the greater Ohio Valley and Western Pennsylvania. ORVI strives to help the Ohio Valley region mark out a path toward shared prosperity, clean energy, and more equitable civic structures. In 2021, ORVI published a national report on the Abandoned Mine Land (AML) program¹ and throughout 2022 has engaged in listening sessions with labor partners in the Ohio River Valley regarding implementation of the BIL AML funds. For aspects of the program that relate to labor matters and procurement, ORVI and other signatories of this letter have submitted more detailed and complete comments in a separate letter.
- **The Alliance for Appalachia** promotes a healthy, just Appalachia by supporting our member organizations in communities impacted by destructive resource extraction.
- **West Virginia Rivers Coalition (WV Rivers)** is a statewide clean water advocacy organization based out of Charleston, West Virginia. Since 1989, its mission has been to conserve and restore West Virginia's exceptional rivers and streams. WV Rivers works closely with policymakers and agencies to restore waters and revitalize communities impacted by abandoned coal mines.
- **Jobs with Justice of East Tennessee** is a coalition of labor, community, and religious organizations and friends who take action to support the rights of all working people. We campaign both for safe and decent work and for a clean and healthy environment. Based as we are in East Tennessee, we are well aware of the damage too often left behind when the coal industry abandons lands, communities, workers, or all three.
- **Statewide Organizing for Community eMpowerment (SOCM)** is a member-driven organization that utilizes civic involvement and collective action to empower Tennesseans to have a greater voice in determining their future. We work for social, economic, and environmental justice for all.
- **Sierra Club** is a 130-year-old, national organization focused on energy, environmental justice, and getting people outdoors to explore, enjoy, and protect the planet. We have members who live, work, and recreate in communities with Abandoned Mine Lands across the country and we advocate for environmental protection and economic diversification.

Our comments and recommendations are offered below and are organized by section of the Draft Guidance.

¹Dixon, E. (2021). Repairing the Damage: Cleaning up the land, air, and water damaged by the coal industry before 1977. Ohio River Valley Institute.
<https://ohiorivervalleyinstitute.org/wp-content/uploads/2021/04/AML-Report-Dixon-ORVI-V1.1-4.pdf>

I. Overview

Grant Maximums and State/Tribal Eligibility

On page 1, footnote 2, the Draft Guidance states “OSMRE will ensure that the *annual grants* provided to a State or Tribe do not exceed its estimated cost to reclaim its remaining coal AML problems and water supply restoration, as documented in the Abandoned Mine Land Inventory System (e-AMLIS).” We applaud the Department’s clarification that funds will not be awarded to states with no remaining inventory. We recommend that the final guidance clarify that “annual grants” in this footnote refers to the combination of the BIL AML funding and annual mandatory AML program distributions together. Because the distribution formulas for both the BIL and the traditional fee-based AML funding revenue do not rely solely on the e-AMLIS, there is a potential for a state or tribe to receive more funding than is needed according to the e-AMLIS system, while other states and tribes do not receive adequate funding to resolve all of the high-priority sites in the e-AMLIS. This clarification will ensure that states and tribes receiving regular AML program distributions that are sufficient to meet the needs of the inventory do not receive additional BIL AML grants, ensuring that taxpayer funds are spent efficiently and for their intended purposes.

Proposed edit: “OSMRE will ensure that if the amount of funds a State or Tribe is granted under the traditional fee-based AML program meets or exceeds the estimated cost to reclaim its remaining coal AML problems and water supply restoration (as documented in the Abandoned Mine Land Inventory System (e-AMLIS) while also accounting for the design and administrative costs of e-AMLIS entries as those are not currently incorporated into inventory cost estimates), that State or Tribe will not receive additional BIL AML funding ~~the annual grants provided to a State or Tribe do not exceed its estimated cost to reclaim its remaining coal AML problems and water supply restoration, as documented in the Abandoned Mine Land Inventory System (e-AMLIS).~~”

III. Eligible Projects and Prioritization

Eligible Contractors

We recommend that OSMRE add a section to the guidance regarding contractor eligibility. First, as is consistent with traditional fee-based AML program requirements, OSMRE should explicitly state that companies that own or control mine operations that have unabated or uncorrected violations anywhere in the U.S. will not be eligible for these BIL AML contracts.

Proposed addition: “In order to be eligible to receive BIL funds, every successful bidder for an AML contract must be eligible under 30 CFR §§ 773.12, 773.13, and 773.14 at the time of

[contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.”](#)

Justice40 Prioritization

We applaud the Department’s inclusion of Justice40 as a consideration for prioritizing projects. However, the Draft Guidance as written is vague and does not provide the clarity or instruction states will need in order to effectively meet this goal.

While the administration’s tool (The Climate and Economic Justice Screening Tool) for determining whether a community meets the definition of “disadvantaged” is still in draft form, it illustrates a potential challenge for the Department to be able to meet the goal of investing 40% of AML funds in disadvantaged communities while still complying with the federal statutes with respect to how AML funds must be distributed. Specifically, in certain states, such as Pennsylvania and Maryland, the draft tool does not identify many communities with priority AML sites as “disadvantaged,” and thus would not count those AML investments toward the Justice40 goal. SMCRA requires those high priority sites receive funding over lower priority sites, regardless of the “disadvantaged” status of the community. Because of the mismatch in the funding distribution formula and CEJST’s designation of disadvantaged communities, it will not be possible for certain states to meet the Justice40 standard. However, it is our view that a large portion of communities with AML sites would meet the interim definition of “disadvantaged” provided by OMB even if not identified by the CEJST as such.²

Therefore, for the purposes of meeting the Justice40 goal, we recommend that the final guidance:

1. Require that, in doing inventory management/updates, states prioritize sites and areas that fall within low-income and otherwise disadvantaged communities, in order to ensure those communities’ AML features are reflected in the inventory and thus have a higher likelihood of being remediated;
2. Recommend that if the majority of a state's AML sites fall outside of disadvantaged communities, that those within disadvantaged communities are given greater priority. Operationally, that would look like a Priority 1 site in a disadvantaged community prioritized over a Priority 1 in a non-disadvantaged community, a Priority 2 site in a disadvantaged community prioritized over Priority 2 site in a non-disadvantaged community, etc.
3. Additionally, because state funding distribution amounts are set in statute, and the number of disadvantaged communities in a state or tribal territory cannot legally change the distribution formula for AML funds, prioritization of disadvantaged communities

² Executive Office of the President, Office of Management and Budget. July 20, 2021. M-21-28. Memorandum for the Heads of Departments and Agencies. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

should be determined at the state level, rather than at a national level, as the Department of Energy has done with its Justice40 methodology.³

Prioritization of Coal Industry Employees

We support the BIL and the Draft Guidance measures for supporting former and current coal industry employees. We make the following recommendations to help strengthen the guidance with respect to this goal.

The BIL states that “in providing grants under this section, priority may also be given to reclamation projects ... that provide employment for current and former employees of the coal industry.” However, the Draft Guidance refers only to “miners” in reference to its preferences for contractor hiring. The Draft Guidance should be revised to reflect that there are current and former employees of the coal industry that would not be considered “miners.”

Proposed edit: Replace each reference to “miners” with “[current and former coal industry employees](#).”

On page 3, paragraph 3, the Draft Guidance states “requiring contractors to affirm they will give preference to miners in any hiring for BIL-funded AML projects.” We recommend:

- Clarifying that this includes any/all employees regardless of hiring date, rewarding both companies that have already hired former coal industry employees, and those that hire them going forward.
- Clarifying that coal industry employees hired must have the required qualifications and skills in order for the bidder/project to be considered eligible for prioritization. As written, we are concerned that the Draft Guidance gives strict preference to coal industry employees without taking into account other qualifications. In hiring considerations, preference to coal industry employees should be contingent upon candidates having matching qualifications and skills for the job or such qualifications and credentials should be offered by the contractor or a partner organization to provide necessary safety and skills training to these employees.
- Clarifying whether states and tribes will be *required* or *encouraged* to use procurement processes that incentivize employment of current or former coal industry employees. Specifically, on page 3, the word “require” is used, but on page 4, the word “encouraged” is used with respect to hiring coal industry employees. We recommend that, at a minimum, states and tribes be required to collect information on the number of former miners that AML contractors employ (both reported as counts as well as in terms of the percentage of employees that were formerly miners).

³ <https://www.energy.gov/diversity/justice40-initiative> Under DOE’s methodology, all tribal communities are considered “disadvantaged.”

Proposed edit: Measures to implement these priorities include: (1) requiring contractors to affirm they will give preference to ~~miners~~ current and former coal industry employees with necessary qualifications and skills in any hiring for BIL-funded AML projects (regardless of the coal industry employees' hiring dates); (2) affirming current and former coal industry employees hired for the purposes of meeting this requirement have completed all necessary trainings, certifications, and/or credentials; ~~(2)~~ (3) requiring contractors to report on the extent to which miners have been employed in any AML work the contractors perform; ~~(3)~~ (4) requiring contractors to retain data that can substantiate the reported information; and ~~(4)~~ (5) providing to OSMRE the information reported by the contractors as part of the State or Tribe's regular AML reporting processes.

Project Aggregation

We support the Department's efforts to encourage project aggregation. This is important for both efficient spending of AML funds, as well as providing longer-term job certainty for contractors. We encourage the Department to offer further guidance and support to states and tribes regarding how to most efficiently bundle projects, and examine whether there are opportunities for OSMRE to incentivize bundling by prioritizing grant review for larger, bundled projects (particularly those over \$1 million).

Priority 3 Projects

We appreciate the Department's clear guidance that Priority 3 projects are eligible for BIL AML funds. These sites are important to clean up in order to create a safer, healthier environment for coal-impacted communities.

Workforce support

We want to underscore the recommendations of our partners at BlueGreen Alliance and other labor experts in our coalition. The Department should ensure that jobs created by the Bipartisan Infrastructure Law Abandoned Mine Land Grant Program are not just good jobs, but *accessible* jobs. This means supporting and growing pathways into good jobs—often through apprenticeships and pre-apprenticeships—in these and other sectors for workers of color and other segments of the population historically underrepresented in these jobs.

Strong unions can play a key role in promoting diversity, equity, justice, and inclusion within these programs. A BlueGreen Alliance analysis of the U.S. Department of Labor's (DOL) Registered Apprenticeship Partners Information Database System (RAPIDS) found that in the construction industry, 43% of apprentices were people of color in union programs, compared to 33% people of color in non-union programs. However, enrollment in these programs only shows one small metric by which to judge if these programs work to advance the careers of people of color. For true equity and justice to be sustained, officials must focus not solely on enrollment rates, but must carry that focus to retention and promotion within the workplace, that means, in

part, working to ensure that apprentices have not only the technical skills, but also the professional tools they need to succeed.

Pre-apprenticeship programs in particular have become a key tool to improving diversity in the building trades. Such programs aim to ensure that workers can qualify for entry into an apprenticeship program and have the skills they need to succeed. These programs are generally designed to target certain populations or demographics such as low-income workers, workers of color, women, and other marginalized communities. Additionally, many unions offer training throughout a member's career to enable them to stay up to date with changes in technology. The Department and OSMRE should ensure that States and Tribes connect projects to apprenticeship and pre-apprenticeship programs wherever possible.

IV. BIL AML GRANTS

The Draft Guidance does not make clear how it will manage funds that are unused and uncommitted after the five-year expenditure window other than by explaining that an additional year for spending may be granted through a waiver process. However, we do not believe that this adequately addresses how funds, if still unused after a six-year period, will be managed. While it is not crucial that this be clarified in the final guidance for the first year of funding, we recommend that through future guidance documents or a subsequent rulemaking, OSMRE develop a process for redistributing unspent funds. We recommend that:

- Any uncommitted funds be returned to the AML fund and be reallocated, to the extent practicable, based on the proportion of unreclaimed eligible lands and waters the State or Indian tribe has in the inventory maintained under section 403(c). Funds reallocated based on this criteria will be in addition to annual distributions made based on historic coal production percentages.
- “Uncommitted” be defined as funds that have been received by states or tribes that have not been applied to or reserved for a specific project or have not been expended or designated by the State or Indian tribe for the completion of a project.

V. DAVIS-BACON ACT

We appreciate the Department's inclusion of Davis-Bacon requirements, as required by the BIL. The Department should continue to affirm Davis-Bacon as a requirement of the AML funding and ensure the requirement is not circumvented by any loopholes at the state and local level for work done with AML funds. Proper enforcement of Davis-Bacon requirements requires a robust system of enforcement. We support recommendations to help enforce these requirements described in separate comments submitted by our partners at ORVI and BlueGreen Alliance. One such measure that we recommend is that the Department encourage states and tribes to use an active monitoring system. An active monitoring program helps verify that workers know their

rights and are actually being paid what the contractor is reporting to the state or tribal AML agency. For example, the Pennsylvania Department of Transportation uses a monitoring system that directly surveys workers on a monthly basis (which is then compared with certified payroll data provided by the contractor, to ensure compliance).

VI. PUBLIC ENGAGEMENT

We commend the Department for encouraging public engagement regarding how BIL AML funds are spent, particularly as these taxpayer funds are intended to improve the health and safety of those impacted stakeholders. We make the following recommendations in order to encourage and support states and tribes in pursuing a robust community engagement process, and to improve the outcomes of such a process.

We recommend:

- Prior to the time that states and tribes submit their BIL AML grant applications:
 - The list of potential projects should be informed by input from stakeholders. At minimum, state and tribal AML agencies should be required to demonstrate that projects were identified through citizen or local government complaints and subsequently determined eligible for BIL AML funding. Additionally, state and tribal AML agencies should be required to demonstrate outreach to and input from disadvantaged communities of color, low-income communities, and Tribal and Indigenous communities. This outreach should be conducted via:
 - Public notices in widely read local publications,
 - Canvassing in disadvantaged communities,
 - One-on-one outreach to prominent leaders in these communities including but not limited to, religious leaders, teachers, community organizers, union representatives, civic organization officers, and local elected officials,
 - Effectively targeted social media promotion,
 - Informative flyers posted in high traffic locations within these communities,
 - Other effective means.
 - The list of potential projects should be made available to the public at least 90 days prior to submission of a state or tribe's grant application.
 - For this first round of BIL AML grants, each state and tribe should conduct at least one public meeting in each of its affected regions, including a virtual option, regarding the list of projects for which the state or tribe will apply for funding. A public meeting is necessary to explain to stakeholders (1) the new funding opportunity, (2) differences compared to traditional AML funding, (3) the state or tribe's methodology for how it is selecting projects for the BIL AML funds, and

(4) the state or tribe's efforts to comply with the priorities regarding hiring current and former coal miners, aggregating projects, training opportunities, labor practices, methane emissions, and Justice40/disadvantaged communities. For subsequent years of funding, we recommend OSMRE require states/tribes to provide a public meeting only upon request from local stakeholders.

- OSMRE should require states and tribes to issue public notice via print media, websites, and social media and/or partner with organizations prior to the initiation of a project or projects that, in aggregate, are valued in excess of \$1 million such that the public can make inquiries regarding the project workforce continuity plan.

Proposed Addition: “States and Tribes must solicit public input when developing a list of grant projects prior to submitting proposed projects to OSMRE. Public input opportunities should be noticed in print media circulated in impacted communities, via social media, on state/tribal websites, and through partnerships with state and local agencies, nonprofits, and businesses. The list of potential projects should be made available to the public at least 90 days prior to submission of the state/tribe’s grant application. Additionally, for this initial round of funding, each state/tribe must conduct at least one public meeting to receive public feedback on the proposed list of projects, as well as to provide the public with information (1) the new funding opportunity, (2) differences compared to traditional AML funding, (3) the state/tribe’s methodology for how it is selecting projects for the BIL AML funds, and (4) the state/tribe’s efforts to comply with the priorities regarding hiring current and former coal miners, aggregating projects, training opportunities, labor practices, methane emissions, and Justice40/disadvantaged communities.. States and Tribes must be able to demonstrate outreach to disadvantaged communities of color, low-income communities, and Tribal and Indigenous communities. States/tribes to issue public notice via print media, websites, and social media and/or partner with organizations prior to the initiation of a project or projects that, in aggregate, are valued in excess of \$1 million such that the public can make inquiries regarding the project workforce continuity plan.”

In addition to these recommendations, it is important to note that though broad public engagement is necessary, this shouldn't be taken to mean that projects with the most public support or interest should always be prioritized. For example, an AML feature such as a landslide that imminently threatens a small family home may only impact that one family, but is still a higher priority than a non-life threatening AML feature that could facilitate a new economic development project. Our support for public engagement should not be read as a recommendation that the number of stakeholders interested in a site equates to a more important project. Health and safety, alongside environmental remediation, should always be of primary importance.

VII. ENHANCED ABANDONED MINE LAND INVENTORY SYSTEM (e-AMLIS)

We are eager to see improvements to e-AMLIS as a result of Congress's \$25 million investment. Improvements to the system are urgently needed, and are especially important because entries in e-AMLIS determine, in part, how much money each state and tribe receives from the traditional AML fee. The inventory currently significantly underestimates the cost of reclamation for AML features, and is a substantial undercount of the total AML sites in existence. ORVI estimates that the current inventory underestimates the total cost of outstanding AML reclamation by as much as \$22.6 billion.⁴ Congress has allocated the \$11.3 billion to the AML fund to directly address the outstanding cost currently reflected by e-AMLIS, but unfortunately this amount will not fully fund the AML reclamation needed in the country. It is critical that the \$25 million investment Congress has made in the inventory make significant progress toward more accurately reflecting the full amount needed for AML reclamation nationwide, in order to inform future Congressional investments in AML-impacted communities.

The Draft Guidance notably does not address how this large investment from Congress will be managed or spent by OSMRE. We strongly recommend OSMRE issue a public proposal for comment regarding how the funds should be spent. The inventory is an important resource for community members and thus changes to protocols for managing the inventory should be made publicly available, and informed by public input. Additionally, given the Draft Guidance's prioritization of sites with methane emissions, we recommend that OSMRE develop guidance for states and tribes regarding how to quantify and document methane emissions from AML sites, which in turn will inform the costs associated with those projects and e-AMLIS entries.

We recommend that the following be prioritized in the inventory updates:

- Additions to the inventory, including the addition of Priority 3 sites. Many sites that may have been reviewed and removed or left out of the inventory in the past may have changed (e.g., sites can become more hazardous over time, or new development or recreational activity may make the site a higher priority). Funds can be used for field staff to conduct on-site assessments to add new sites, or re-add previously identified sites to the inventory, and to conduct outreach to encourage the public to notify state and tribal AML agencies of un-inventoried sites. OSMRE can make a portion of the funds available for states and tribes to conduct, in partnership with community organizations, public education programming about AML sites and what community members can do if there is an AML site impacting them or their community.
- Updating and validating existing inventoried sites. Again, many AML sites once considered low priority sites may now pose a greater risk to those who live nearby. The hazards presented by an AML feature may change over time as features degrade, as population centers move, or as new recreational activity or developments have moved

⁴ Dixon, E. (2021)

closer. These changing factors may have also impacted the costs associated with reclamation.

- Recalculation of existing cost entries to account for inflation and to incorporate estimates of design and administrative costs for each project.
- Increasing the accuracy of acid mine drainage (AMD) treatment cost estimates in the inventory. Specifically, some funds should be made available for state and tribal programs to purchase and deploy instrumentation to measure flows and monitor water quality to estimate the cost of AMD in conjunction with the AMD Treat software tool. We also recommend that when state and tribal programs are updating their inventories and cost estimates, that some portion of this funding be made available for feasibility, planning, or design studies on AMD projects to better delineate mine pool boundaries such that the extent of the area and the volume of water that requires treatment can be more accurately documented.
- Migrating e-AMLIS over to a "real time" ArcGIS Online Integrated Mapping System (IMS) that can incorporate the projects, funding allocations, problem areas, pads, point features (AMD, shafts, slopes, etc.) and related attributes in a uniform national database. New attributes and layers could also be added, such as summary payroll data for completed projects and sociodemographic data (such as income level, education, and health metrics) on nearby populations, particularly to help implement and track compliance with the Justice40 initiative. These layers could be pulled in from resources such as the EPA's Environmental Justice Screening Tool, so as to minimize work for OSMRE.

VIII. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

We agree and support the Department's determination that all BIL-funded reclamation projects are subject to review under the NEPA. It is crucial that AML projects minimize environmental impact in communities already dealing with the impacts of abandoned coal mines.

IX. PROJECT AUTHORIZATION

We applaud the Department's efforts to ensure that jobs associated with BIL AML work are safe, good-paying jobs. We also support the use of project labor agreements, community benefit agreements, and efforts to support local hiring. We propose the following edit in order to strengthen these provisions.

Proposed edit: "For projects or aggregated projects in excess of \$1 million, States or Tribes ~~may~~ **must** 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)). In lieu of

such certification, the Recipient ~~may~~ must develop a project workforce continuity plan, detailing:”

X. BIL AML PERFORMANCE MEASURES & REPORTING

We appreciate the Department’s efforts to track specific data in order to assess the impact of the program over a broad range of metrics. Such transparency and evaluation will help to inform any future necessary modifications to the program and demonstrate the important impact the program is having on communities.

We understand that though it would be ideal to track as many metrics as possible, requiring too many metrics may become onerous for state and tribal AML agencies. To this end, we would like to highlight that of the list below, some of the metrics that we feel will be most important to track include:

- Amount of methane and carbon dioxide emissions reduced
- Percent/amount of overall benefits and types of benefits that accrue to disadvantaged communities, communities of color, low-income communities, or Tribal or Indigenous communities
- Percent of workers from the local community
- Number of acres reforested
- Number of trees planted on AML sites

Broadly, tracking program impacts is incredibly important, and we support tracking a wide variety of metrics. We recommend tracking of the metrics below, with the specific recommendations and additions noted:

- Number of acres reforested
- Number of trees planted on AML sites
 - Long-term monitoring of tree survival will be necessary to ensure effectiveness
- Number of bat gates installed
- Number of tons of rare earth elements, metals, or sediment recovered for reuse
- Amount of methane emissions reduced
 - We recommend that along with this metric, states/tribes be required to explain the methodology used for measurement.
 - We recommend using new methane tracking methods, such as the MethaneSAT and CarbonMapper, to track and report methane emissions from abandoned mine lands, to help communities and states better understand both the threat and possibilities around methane emission from AML sites.⁵
- Quantity of iron, aluminum, manganese, sulfate, etc. removed and/or recovered on annual basis by AMD water reclamation projects

⁵See www.methanesat.org and <https://data.carbonmapper.org/>.

- This metric should be tracked for other water/stream related reclamation projects (such as for clogged streams) when relevant, not just for AMD projects
- Quantity of Rare Earth Elements (REE) recovered by water reclamation projects
 - This metric should be tracked for other water/stream related reclamation projects and gob reclamation projects when relevant, not just for AMD projects
- Number of polluted water supplies addressed
 - This metric should be tracked for other water/stream related reclamation projects (such as for clogged streams), not just for AMD projects
- Miles of waterways improved
 - This metric should be tracked for other water/stream related reclamation projects (such as for clogged streams), not just for AMD projects
- Volume of water treated
 - This metric should be tracked for other water/stream related reclamation projects (such as for clogged streams), not just for AMD projects
- Number of outflows remediated
 - This metric should be tracked for other water/stream related reclamation projects (such as for clogged streams), not just for AMD projects
- Percent of overall benefits and types of benefits that accrue to disadvantaged community, community of color, low-income community, or Tribal or Indigenous community
- Percent of workers from the local community
 - The phrase “local community” needs a definition. We suggest that for this purpose, “local community” be defined as the county in which the AML project is located or the adjacent counties.
- Whether there is a community benefit agreement as part of the project
- Electric generating capacity of renewable energy facilities installed on reclaimed AML sites
 - We recommend that ownership of such facilities and the end user of the power also be documented.
- Number of job hours involved in BIL AML remediation
- Number of people receiving potable water after completion of water supply restoration projects
- Number of residents positively impacted by the restoration of previously polluted waterways

We recommend adding the following metrics:

- Number of residents within 1 mile of BIL-funded projects.
- Number of residents protected from imminent harm (such as landslides or subsidence)
- Feet of highwall reclaimed
- Mine portals/openings sealed/closed
- Carbon dioxide emissions reduced

- Number and size of gob piles remediated and the type of remediation (i.e., revegetated and left onsite, removed and put in landfill, or removed and burned)
- Number of roadways, walkways, or trails protected from imminent or future damage
- Number of pieces of dangerous abandoned equipment or facilities demolished and removed
- Whether the project was bundled (multiple AML projects in one contract)
 - Estimated cost savings from bundling project
- Wages and fringe benefits (based on underlying Davis-Bacon reporting)
- Occupations who worked on project (based on underlying Davis-Bacon reporting)
- Number of labor hours worked by apprentices

In order to track compliance with the Justice40 initiative, it is important that in addition to tracking the number of people impacted by the reclamation projects, the general location of those people should also be tracked. We recommend modifying the following metrics as follows:

- Number of former/current employees of the coal industry employed in AML reclamation, [and county/city residence of those employees](#)
- Number of people receiving potable water after completion of water supply restoration projects, [and county/city residence of those people](#)
- Number of residents positively impacted by the restoration of previously polluted waterways, [and location of those residents](#)

Additionally, to better inform the public of the impacts of water treatment and water restoration projects, the OSMRE should establish and maintain a public map and database of water quality and water treatment and water restoration projects.

Furthermore, certain metrics particularly related to socioeconomic impact will be potentially difficult for the state and tribal AML agencies to track and document as there may be many AML sites that, at the time of remediation, do not have a specified end user. Projects that do have, at the time of remediation, a designated end-use related to community/economic development should be noted, alongside predicted end-use job impacts.

Conclusion

We are encouraged by the Department's efforts to reclaim abandoned mine lands in a manner that prioritizes strong labor provisions and benefits to disadvantaged communities, and hope that our recommendations are adopted in order to equitably and effectively distribute the BIL AML Funds. Thank you for your consideration.

Sincerely,

Rebecca Shelton
Appalachian Citizens' Law Center

rshelton@aclc.org

Chelsea Barnes
Appalachian Voices
chelsea@appvoices.org

Dave Gorman and Helen de Haven
Co-Chairs
Jobs with Justice - East Tennessee
jwjetn@gmail.com

Eric Dixon
Ohio River Valley Institute
dixon@ohiorivervalleyinstitute.org

Jonathan Levenshus
Sierra Club
jonathan.levenshus@sierraclub.org

Adam Hughes
Statewide Organizing for Community eMpowerment
adam@socm.org

Lyndsay Tarus
The Alliance for Appalachia
lyndsay@theallianceforappalachia.org

Angie Rosser
West Virginia Rivers Coalition
arosser@wvrivers.org