"The Interstate Mining Compact Commission: Seeking to Secure State Sovereignty in the Minerals Arena"

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Before the

Alaska Support Industry Alliance
"Meet Alaska"

January 10, 2014

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Thank you for the opportunity to participate in this year's Meet Alaska conference. It is a particular pleasure to be here given the state of Alaska's entry into the Interstate Mining Compact Commission as our newest full member state last April. I would like to share with you today some background about the Compact in terms of who we are, how we operate, and why I believe Alaska has joined forces with our other 25 member states to advocate for state interests and states rights' in Washington, DC. I also plan to touch on several key regulatory and legislative issues that will continue to occupy our time and resources over the coming year on behalf of the states. Given the uphill battle to preserve some semblance of state sovereignty in our Nation's Capital these days, we find that it is increasingly challenging to make our views heard, much less acted upon. As Harry Truman once said, "If you want a friend in Washington, DC, get a dog." Unlike the fellows in this picture, I actually have three dogs in my family which gives you some idea of how desperate I've become.

IMCC will be marking its 45th year of service to the states next year and over those years we have become larger in our membership and broader in our scope of issues and interests. IMCC, much like the Interstate Oil and Gas Compact Commission, was conceived as a vehicle by which the states could improve and enhance their role as the primary regulators of the mining industry, serving the dual goal of protecting the environment while maintaining a vital minerals economy that is important to both the member states and the Nation as a whole. IMCC was conceived by a handful of mostly coal-producing states in the mid-1960's under the auspices of the Council of State Governments, which still today actively works with states to form interstate compacts. Interestingly, interstate compacts are prohibited by the U.S. Constitution in Article I, Section 10 without congressional approval, based on the notion that the few and enumerated powers that were reserved for the national government should not be undermined by the states through the use of compacts. Pursuant to several Supreme Court decisions, not all compacts require congressional approval – only those that actually invest regulatory powers with the compact. Compacts like IMCC, which are recommendatory in nature, do not require such approval – which has benefited us greatly given the difficulty in securing any type of approval from the U.S. Congress these days.

Compacts are fairly formal in nature in that they require legislative action to bring a state into the organization. While IMCC has a category of associate membership which merely requires an application and letter of request from the governor of the interested state, participation as a full member requires a bill to be drafted, then introduced and passed by the legislature and eventually signed by the governor. Once a state has entered the compact as a full member, it can only withdraw through a similar legislative action, which preserves the integrity of the organization over time. Alaska went through this legislative process over the course of the last two years – first in 2012, when the compact legislation was passed by the House but lingered in the Senate. Last year, primarily through the efforts of the bill's key sponsor, Senator Cathy Giessel, we succeeded in

winning legislative approval on April 12 and Governor Parnell signed the legislation on April 15.

IMCC's primary purpose is to advance the protection and restoration of land, water and other resources affected by mining through the encouragement of programs in each of the party states that will achieve comparable results in protecting, conserving and improving the usefulness of natural resources and to assist in achieving and maintaining an efficient, productive and economically viable mining industry. The Compact acts through several committees that have responsibility for particular subject matter or policy areas including Environmental Affairs, Mine Safety and Health, Abandoned Mine Lands, Minerals Education, Resolutions and Finance. The states are represented by their respective Governors who serve as Commissioners. The Governors in turn are represented on IMCC committees by duly appointed delegates from their respective states. Governor Parnell's official representative to the Compact is Ed Fogels, Deputy Commissioner with the Alaska Department of Natural Resources. [I believe Ed is with us here today – Ed, could you please stand and be recognized?]

Our primary powers and purposes include the study of mining processes and techniques and their impacts on other natural resources affected by mining including the land, water and air. We develop recommendations that reflect the positions of the states on legislation, rules and policies that affect mineral development and its regulation by the states. We disseminate these positions and other information through a variety of mechanisms including our annual report, quarterly e-newsletters, congressional briefings and special reports such as our Noncoal Mineral Resources Report. We also sponsor two meetings each year where we feature speakers on key issues, as well as workshops and symposia on cutting-edge legislative and regulatory issues and benchmarking initiatives that encourage the enhancement of state regulatory programs.

Our strategic plan is structured around a vision of IMCC serving as an advocate for the member states through information exchange, effective communication, liaison with the federal government and others, and education outreach in an effort to assist the states in fulfilling their dual responsibilities of assuring development of their abundant and strategically important natural resources while protecting and improving the environment. That challenge is a bit like keeping a row of plates spinning on sticks, but through the dedicated and concerted efforts of those in state government who I have the privilege of working with, somehow we keep them all in the air.

Given the new directions in which IMCC is headed as an organization, especially now that we have grown to 26 member states from across the country with every type of mineral production, we are thrilled to have Alaska as a member state. The state brings a level of expertise on several critical mineral, energy and related environmental issues to the table, all of which will make IMCC a stronger, more effective organization. And as I noted in my testimony to the Alaska House and Senate last year, Alaska's participation in the organization opens avenues for the state to be heard in unique and valuable ways in our Nation's Capital not otherwise available to it and to be supported with the clout that comes from 26 states speaking together as one voice. And since IMCC is focused solely

on mining and related environmental protection issues, we are able to delve deeper into the concerns that matter most to Alaska in this critical area of resource use and protection.

In today's legislative and regulatory climate in Washington, DC, it is more important than ever for state governments to be heard and their concerns understood. This is as true for mining issues and related environmental concerns as any other governmental matter, such as health care, transportation, infra-structure and budgets. IMCC is recognized by many in Washington, DC for our experience and expertise on mining issues. As an example, we testified at seven congressional hearings in the House and Senate over the past couple of years on topics such as Good Samaritan protections for hardrock abandoned mine cleanups, stream protection requirements for surface coal mining operations, hardrock financial assurance requirements under CERCLA, legislation to enhance funding for states to reclaim abandoned coal and hardrock mines, and the impacts of the federal budget on state grant programs. We have been consulted by the General Accountability Office and the National Academy of Sciences on a range of issues affecting the states. And we have also been asked to participate on advisory bodies, steering committees and state/federal teams on which our member states generally serve in order to insure their direct input.

The most recent example of IMCC's involvement on Capitol Hill was our participation at an oversight hearing conducted by the House Subcommittee on Energy and Mineral Resources on October 10 at which Alaska DNR Deputy Commissioner Ed Fogels testified on behalf of IMCC and the state of Alaska. The hearing was focused on "EPA v. American Mining Jobs: The Obama Administration's Regulatory Assault on the Economy" and Mr. Fogels spoke to several issues where EPA's institutional attitude needs to refocus on a more collaborative and respectful relationship with the states.

IMCC is regularly called upon to provide its recommendations on a plethora of issues on Capitol Hill and before the federal regulatory agencies in DC. These recommendations are developed by the states at IMCC meetings and conference calls and are communicated in the form of resolutions, testimony at congressional and federal agency hearings, formal comments on agency rulemakings, congressional staff briefings and state/federal meetings and task forces. Without the input of our member states, none of this would be possible. It is our ability to speak with one voice on common concerns that draws the states together and gives meaning to what we do.

I would now like to touch on several issues that are of critical importance to Alaska and on which IMCC is particularly focused. The first of these is the federal budget and the implications for state grant funding. Not surprisingly, over time states have come to rely in a big way on federal aid, with the average for all states in the 35 percent range. As we noted in testimony that we presented to the House and Senate Appropriations Committees concerning the Administration's proposed budget for FY 2014, these grants support the implementation of state and tribal regulatory programs under statutes such as the Surface Mining Control and Reclamation Act or "SMCRA" and the Clean Water Act. As such they are essential to the full and effective operation of

those programs. Pursuant to these primacy programs, the states have the most direct and critical responsibilities for conducting regulatory operations to minimize the impact of mineral extraction operations on people and the environment. The states accomplish this through a combination of permitting, inspection and enforcement duties, and ensuring that timely reclamation occurs after mining.

It is no secret that we as a Nation are facing some tough decisions regarding the overall budget deficit, the debt ceiling and the mechanisms that are needed to bring these under control, particularly sequestration. Following the partial government shutdown in October due to the prevailing intransigence of a politically divided Congress, there were some signs of potential productive resolution, including (for the first time in many years) a congressional budget approved and agreed to by the House and Senate that would provide real guidance to the appropriation committees. This included talk about replacing the hard-edged cuts to discretionary spending caused by the sequester with a more targeted and tempered approach to spending reductions. Just prior to the end of the first session of the 113th Congress, a budget resolution was forged that establishes funding targets for both this fiscal year and the next, including the suspension of most sequestration cuts. The battle has now resumed in the New Year as Congress moves to craft an omnibus appropriations bill based on these budget targets that will need to be passed before expiration of the current continuing resolution on January 15.

Should sequestration prevail as a deficit reduction tool in the future, the consequences for federal agency funding could be much more damaging than last year due to four factors: 1) budget cuts are scheduled to be larger in the future than in 2013; 2) many of the 2013 cuts have not yet been implemented; 3) one-time fixes that mitigated sequestration's worst impacts in 2013 cannot be used again in the future; and 4) sequestration made cuts to little-noticed but critical functions of government – cuts that will be particularly devastating if they are not reversed soon. As the Heritage Foundation recently noted: "automatic spending reductions demonstrate Washington dysfunction" and show how government leaders "relinquished their responsibility to govern to a blunt instrument."

As two writers for the Washington Post have opined: "Many people in other countries still envy the United States. Our system is more open and transparent than most; our economy is stronger and more resilient. But we can't settle for a government performing as badly as ours is now. Artificially created crises, such as the debt ceiling and fiscal cliff, get only expedient kick-the-can-down-the-road responses, and major problems, such as Medicare finances, aren't even addressed. All-or-nothing intransigence is paralyzing the system." One of the likely outcomes, according to some state budget experts, is that states will be faced with some very hard choices about cutting programs, raising revenue, or both. Under some national environmental laws, like SMCRA or the Clean Water Act, where states serve as the primary regulatory authorities, the option to cut critical components of their regulatory programs is untenable and will only result in challenges from federal overseers or environmental groups for failure to perform mandatory duties – not a very palatable outcome.

Beyond the budget and funding issues, several pieces of legislation hold some promise from the states' perspective, including bills in the House and Senate that address the development of critical and strategic minerals. H.R. 761, which was recently passed by the House, provides a much more expansive opportunity for minerals to be considered "critical". Under the bill's provisions, for any mineral which reasonably adheres to the wide set of "critical mineral" criteria, the lead regulatory agency is expected to take steps to increase cooperation among all affected agencies, and most importantly, to reduce delays stemming from duplicative processes and other permitting delays. The most formal requirement in the Act is the 30 month time limit for federal permitting, forcing agencies to streamline their processes in order to comply with this deadline.

S. 1600, recently introduced by Senator Lisa Murkowski, takes a different approach and establishes an actual list of 20 critical minerals, based on more technical analysis of market trends and relative importance of minerals to the domestic economy, national defense, and competitiveness in the world market. The bill also requires several new periodic reports from the various agencies which will chronicle those agencies' performance regarding reduction of administrative delays in mineral permitting. The Act also requires reports from various regulatory agencies which will continuously assess and reassess the critical minerals list and the designation methodology.

The basic purpose of both of these bills is to streamline the permitting process for minerals designated as "critical" in order to increase the efficiency and vitality of the domestic market, protect domestic security for these minerals, and decrease dependence on imported minerals. In part, the legislation comes in response to the "period of resource nationalism" exemplified by China and India's increasing demand for nonfuel minerals.

Bills have also been introduced in, and in some cases passed by, the House that would address what has been referred to as the regulatory train wreck that inhibits mineral development and other business activity. These include bills to require additional regulatory analyses related to economic impacts (H.R. 2122) and amendments to the Regulatory Flexibility Act (H.R. 2542) concerning impacts to small businesses. In one case, a bill (H.R. 2824) passed by the House Natural Resources Committee would prohibit the Office of Surface Mining from promulgating a rule on stream protection and instead defer to the states' implementation of a rule adopted in 2008 that provides a wide range of enhanced stream protections, particularly in Appalachia. IMCC recently testified in support of this bill. There have also been congressional riders offered on appropriations bills to restrict funding for the development or implementation of various rules or initiatives by federal agencies, including an anticipated EPA rule on financial assurance for the hardrock mining industry, rules or guidance documents pertaining to the definition of "waters of the United States", expansion of the storm water discharge program under the Clean Water Act, and EPA's proposed rule on greenhouse gas new source performance standards.

Among the various legislative, regulatory and policy issues that IMCC is pursuing on behalf of the states, several have particular relevance for Alaska. In 2006, the Surface Mining Control and Reclamation Act, which provides for the regulation of coal mining

operations, was amended to extend the collection of fees from the coal industry that fund the abandoned mine land program. Under that program, the states receive grants to reclaim mines that were abandoned prior to 1977 and to date over $6.2 billion has been collected and disbursed for this purpose. The inventory of abandoned mine lands remains at high levels, with over $4 billion of high priority work yet to be done. Even though fee collection will not terminate until 2021, we are already planning for reauthorization of the fee given the legislative maneuvering that will likely be required to achieve this goal. It took almost 10 years of concerted effort among a host of stakeholders to win reauthorization in 2006, so we are well aware of the challenges that face us the next time around.

A related legislative initiative is the pursuit of protections from liability under the Clean Water Act for those who undertake to remediate abandoned coal and hardrock mines that have impaired water quality associated with them. IMCC has testified on several occasions at both oversight and legislative hearings about the need for these "Good Samaritan" protections given the significant inhibition that potential liability has for watershed groups, state agencies and others who undertake efforts to restore the overall water quality at abandoned mines. Our belief is that some improvement is better than none; and often the results of this type of work have been remarkable. A few recent court decisions have further complicated the legal implications associated with this remediation work and we firmly believe that legislation is needed to pave the way for meaningful future efforts.

Given recent regulatory initiatives by the U.S. EPA in the areas of greenhouse gas emissions, revisions to the definition of "waters of the U.S.", and conductivity standards, we could eventually see further legislative attempts to curb EPA authority beyond the appropriation riders mentioned earlier. In the meantime, much of the action is before the federal courts, where several lawsuits brought by industry, environmental groups or both are pending which challenge EPA rulemakings or initiatives. Of particular note are legal actions challenging EPA's application of conductivity standards at coal mines; EPA's retroactive veto authority; and more than likely, EPA's new greenhouse gas rules when finalized.

In a larger sense, some believe that the courts have become one of the key protections of federalism in our system – the U.S. Supreme Court in particular. Former U.S. Solicitor General Paul Clement has said that "it has come to pass that federalism has become something that gets enforced, at least in part, by the Supreme Court of the United States." Pointing specifically to the challenge of the Affordable Care Act, Mr. Clement said "the health care decision really does underscore that this is a court that cares about federalism principles." Referring to the section of the Act that required states to expand Medicaid programs or be subject to the loss of all Medicaid funding, Mr. Clement noted that in striking down this part of the Act, the Court for the first time ruled a law was unconstitutional on the ground of coercive use of a federal spending program. Such reasoning could prove useful in other contexts, such as a recent Interior Department Inspector General report that recommended withholding grant funding for the state of Oklahoma unless it complied with an OSM mandate to amend or interpret its state

program to align with OSM's view of the world concerning approximate original contour.

With respect to legal challenges, IMCC itself has been active on behalf of its member states, particularly with respect to preserving state primacy under national environmental laws. Most recently, IMCC submitted an amicus curiae brief in the appeal of a federal district court decision in Montana which upheld the state's administration of its regulatory program with respect to cumulative hydrologic impact assessments. In its brief before the U.S. Court of Appeals for the Ninth Circuit, IMCC asserts that the district court's decision promotes consistency and predictability concerning the exclusive jurisdiction of primacy states to regulate coal mining within their borders. The decision also respects the sovereignty of the primacy states by requiring legal challenges to their mining programs to be brought in state courts under state law, and encourages affected parties to use available state administrative channels and appeals to pursue challenges to purely state agency actions. IMCC made similar arguments in an amicus brief filed with the Tenth Circuit Court of Appeals challenging a permitting action in Oklahoma. A similar decision was reached by a federal district court in Alaska within the past year upholding the state's actions concerning permit extension decisions.

Given the antipathy of the present Administration with regard to state sovereignty and its preference for a larger federal government role, especially in the area of environmental protection, the states have been increasingly dependent on the courts to preserve state primacy. We have therefore been encouraged by decisions in cases such as *National Mining Association v. Jackson* where Judge Reggie Walton of the U.S. District Court for the District of Columbia articulated the respective roles between state and federal governments under the Surface Mining Control and Reclamation Act. In invalidating EPA's final guidance concerning Appalachian surface coal mining operations, Judge Walton opined that "the SMCRA grants to EPA only the ability to comment on and provide its written concurrence prior to the Secretary of Interior's approval of a state SMCRA permitting program." He went on to state that "the EPA cannot justify its incursion into the SMCRA permitting scheme by relying on its authority under the Clean Water Act – it has no such permitting authority." Even though this decision is currently being appealed, we are hopeful that Judge Walton's legal analysis will prevail and will be helpful in resolving some of the numerous notices of intent to sue that are pending throughout the country, but especially in Appalachia, concerning the role of the states in setting and implementing appropriate water quality standards for mining operations within their borders.

Turning now to the regulatory arena, perhaps the signature rulemaking for the Office of Surface Mining (OSM) is its stream protection rule which would replace a final rule adopted in December of 2008 as well as the 1983 stream buffer zone rule, the latter of which is still in effect in most states. Few, if any, OSM rulemakings have generated as much interest and angst as this one. In addition to the tens of thousands of comments that have been submitted so far on the advance notice of proposed rulemaking and the EIS scoping process, the rule has attracted widespread interest on Capitol Hill. To date, there have been five oversight hearings held by the House Natural Resources Committee or

one of its Subcommittees; there are two congressional subpoenas for information and data concerning the rule; and the rule has been raised as a topic of concern in almost every oversight hearing concerning OSM's proposed budgets since FY 2010. As noted earlier, the House Natural Resources committee recently approved a bill to scrap this new rulemaking in deference to the previously promulgated rule from 2008.

Eleven states are participating as cooperating agencies in the development of the programmatic EIS for the rule given the potential consequences for state regulatory authority. To the extent permitted under the EIS review process, which has often been constrained by severe time limits for the submission of comments, these states have provided input to OSM on the various chapters of the draft EIS, including technical information and data concerning regional implications of the various alternatives OSM is considering. As we articulated in our comments to OSM and in testimony presented at a congressional oversight hearing on the rule, the states have serious concerns regarding implementation of the rule as drafted. Of particular importance is how the rule comports with SMCRA's goal of creating a level playing field across 24 state regulatory programs. For instance, the term "material damage to the hydrologic balance", which the rule would address, is contained in each state's program and OSM's effort to define the term, particularly as it applies in the Appalachia region, will have consequences for all states, regardless of how OSM attempts to narrow its scope or applicability. In fact, given the significant differences in geology, hydrology and terrain among the various regions of the country where surface coal mining operations occur, regulatory terms such as "material damage" have necessarily been left to each state to define based on their unique circumstances.

OSM has set forth in the draft EIS chapters upwards of 55 different options for proceeding forward with a new stream protection rule. Most of these are variations on themes that have already been explored in previous rulemakings or EIS's. Some alternatives suggest the use of concepts that have proven elusive or difficult to implement in the past, such as quantitative or qualitative thresholds. However, reading between the lines of the draft EIS, what the states sense is an attempt by OSM to reconcile not just its own regulatory requirements under SMCRA, but a larger, undefined set of standards for water quality protection being advocated by EPA and the U.S. Army Corps of Engineers. This rulemaking simply cannot be taken out of context from all the other activity that has attended the development of a June 2009 EPA/DOI/Corps MOU regarding Surface Coal Mining in Appalachia. While much of the activity that stimulated the apparent need for this rule has been focused in central Appalachia, the overarching concerns regarding conductivity, total dissolved solids, and numerical and narrative biologic water quality standards have implications nationwide. Furthermore, there is simply no agreement among the affected federal agencies on what those standards should be. In some circumstances, such as the setting of narrative water quality standards, the federal agencies play no role whatsoever. These determinations are left solely to the states under the Clean Water Act.

The role and authority of the states will also be at issue in two other pending rulemakings before OSM: mine placement of coal combustion residues, or coal ash and

cost recovery. In the first of these, OSM will need to determine the extent to which it will rely upon existing state regulatory requirements for the handling of coal ash as part of the mining and reclamation process at both active and abandoned mines. As you might imagine, the states have advocated the use of the SMCRA permitting platform as the most meaningful and effective mechanism for addressing the matter. We believe that OSM's existing permanent program regulations, together with the state regulatory programs approved pursuant to those rules, can and do provide a comprehensive and complete approach for assuring that the placement of coal ash at coal mines is done in an environmentally protective way. We are hopeful that as OSM moves forward with the development of a proposed rule, the agency will structure it so as to encompass and accommodate the various approaches adopted by the states over the years. Often these arrangements are the result of a coordinated approach among several state agencies that have a stake in the placement of coal ash at mines, including those responsible for water quality and solid waste.

Once again, Congress has weighed in on this matter, confirming in recently passed legislation in the House (H.R. 2218) that mine placement of coal ash remains the province of OSM and should not be caught up into EPA's rulemaking on disposal of coal ash at power plants. The bill would also prohibit EPA from designating coal ash as a hazardous waste under Subtitle C of RCRA, which would be the death knell for placement of coal ash at mines – to say nothing of their restricted use as a recycled product for things like wallboard and cement. As with most pending legislation coming out of the House in the 113th Congress, prognosis for passage in the Senate is dim.

With regard to cost recovery, OSM is contemplating upwards of three separate rulemakings that would provide for increases in fees to mine operators to allow state and federal regulatory authorities to recoup some of the costs associated with program implementation, particularly related to permitting. One rule would apply to federal programs administered by OSM; the second would apply to federal lands where states operate programs pursuant to cooperative agreements with OSM; and the third would apply to state regulatory programs. The first of the rules is expected to be released soon and will be watched closely because of its potential to serve as a template for those that follow. The largest concern for the states is with respect to our ability to secure support for permit increases in state legislatures which are by and large suspect of any type of tax or fee increase given today's economic climate.

Where the rubber really meets the road is the potential connection between permit fees and funding for state programs. OSM continues to remind us that there is great potential for significant reductions in federal discretionary spending which could directly impact regulatory grants to states. As a result, increases in permit fees may be the only tonic for the preservation of state programs, according to the agency. To date, the states have been successful in making the case before Congress for federal funding that meets the states' program implementation needs under SMCRA, even in the face of proposed cuts by OSM. In rejecting these cuts and restoring state grant funding to the level requested by the states, the House Interior Appropriations Committee recently directed OSM and the Administration "to discontinue efforts to push States to raise fees on

industry as the bill provides the funds necessary for States to run their regulatory programs." The Committee went on to note that "federal regulatory grants to primacy states result in the highest benefit and the lowest cost to taxpayers, and if a state were to relinquish primacy, OSM would have to hire and train sufficient numbers and types of Federal employees. The cost to implement the Federal program would be significantly higher and as such the Committee summarily rejects the proposal."

The Committee's recommendations and findings are critical for state primacy under SMCRA, as they reflect the most recent iteration of congressional intent regarding the role of the states under the Act. The Committee also went on to address the topic of federal oversight of states under SMCRA, stating that it "similarly rejects the proposal to increase inspections and enhanced Federal oversight of State regulatory programs. Delegation of the authority to the States is the cornerstone of the surface mining regulatory program, and State regulatory programs do not need enhanced Federal oversight to ensure continued implementation of a protective regulatory framework." Based on this conclusion, the Committee refused to provide additional money or FTE's for oversight activities in OSM's budget. This is some of the strongest language supporting state primacy that I have seen in my 25 years of representing the states in DC and it reflects the confidence that both the appropriating and authorizing committees have in the states. While this is an encouraging development for the states, what the future holds for federal budgets remains to be seen. It's not particularly bright.

Let me touch further on federal oversight of state programs. One of OSM's primary oversight tools for following up on its own independent inspections or on complaints that it receives from citizen and environmental groups is the issuance of a Ten-Day Notice, or TDN, to states whereby states have ten days within which to take appropriate action (generally the issuance of notice of violation) or explain why they choose not to act. Over the course of the past couple of years, we have seen a notable increase in the use of TDNs across the country, presumably as part of OSM's enhanced oversight initiative, as originally laid out in the June 2009 MOU. Some of the TDNs are the result of OSM oversight inspections; others (the majority) are a result of citizen complaints. In every case, however, the real impact has been on state resources that are being invested to respond to the TDNs, and to the Notices of Intent to Sue that often follow on from them. The states have maintained that many of these issues would be better resolved if complainants utilized the administrative and judicial procedures that are a required part of approved state programs. At one point, under OSM's Directive on TDNs (INE-35), OSM actually used a Ten-Day Letter mechanism to transmit citizen complaints to the states for resolution under their programs. This not only respected the role of the states and the integrity of their programs, but it better focused the review of TDNs and attendant resources where it belonged – at the state level. Instead of jumping through the additional hoops created by the federal TDN process, and setting up a potential adversarial environment, the states were given the first opportunity to handle the citizen complaints.

OSM's reflexive use of TDNs can be particularly problematic where the issues underlying the TDN are in dispute between OSM and the state because they involve

either an unresolved policy interpretation (as we have seen in Alaska and West Virginia regarding permit extensions) or technical issues (as we have seen in Oklahoma with respect to approximate original contour and in Colorado regarding prime farmland and prime soils replacement). The number of NOIs and attendant complaints being filed in federal courts challenging various aspects of state SMCRA programs, often as they relate to the Clean Water Act, has increased dramatically, which is no surprise given the influx of money available to certain environmental groups to initiate these actions. The challenge for the states is that all of these actions require an enormous amount of staff time to respond to the allegations. This in turns often requires that states defer action on other priorities under their program, such as permit reviews, enforcement actions and program amendments. In the final analysis, a state may find itself being assailed for its failure to perform mandatory duties under its program, thereby subjecting itself to an action under Part 733 of OSM's rules regarding takeover of all or parts of a state program. In fact, we have seen exactly this type of remedy being sought in some of the NOIs from environmental groups.

We believe it is critical that state and federal governments, as partners under SMCRA, learn how to work smarter and find ways of supporting one another instead of undermining our working relationship. Granted, OSM has its role to play as overseer of state program implementation, but there are ways of accomplishing this objective that are less adversarial and more productive than others. OSM has demonstrated this on numerous occasions in the past with respect to technical support, training, joint development of initiatives that enhance state program effectiveness and consensus driven policy and rule design. Where we work in a complimentary fashion, both of us win. More importantly, a culture of trust and shared commitment is nurtured that pays significant dividends.

Over the years, IMCC has had great success in working with various federal agencies in working toward common solutions where our respective roles and authorities can be understood, respected and resolved. Among the more notable examples are the development of performance measures related to federal oversight of state program implementation under SMCRA; development of remining incentives for the coal industry, including the adjustment of applicable NPDES permitting requirements and water quality standards; development of the Applicant/Violator System to stem the issuance of permits to repeat offenders under SMCRA; review of potential approaches for the regulation of coal combustion wastes by EPA and OSM; reforestation best practices; design of a geospatial, geo-referenced data base that captures permitting information for all coal mines in Appalachia; and most recently, a state/federal effort to identify budget and funding priorities for state and federal programs under SMCRA. In each of these cases, IMCC has helped to facilitate the identification and participation of key member states to represent our interests and provide our input, and many of the results have been noteworthy and meaningful.

IMCC has also worked with a variety of other state government organizations to advance our causes, including the Western Governors Association, the National Association of Abandoned Mine Land Programs, the Western Interstate Energy Board,

the Association of Clean Water Administrators, the Groundwater Protection Council, and the Interstate Oil and Gas Compact Commission. By coordinating our efforts, we have been able to provide a united front on several critical issues, including Good Samaritan protections, AML reauthorization, CERCLA financial assurance, and state grant funding. One of our most recent joint undertakings has been as participants on an advisory committee that is responsible for implementing the U.S. Extractive Industries Transparency Initiative, which is an international initiative aimed at developing a robust yet flexible methodology for disclosing and reconciling payments from oil, gas and mining companies and related government revenues in implementing countries. Both IMCC and IOGCC serve as primary delegates to the Multi-Stakeholder Group that oversees this effort and which is composed of representatives from government, industry and civil society. Just last month, the U.S. submitted its candidacy application to the EITI International Board following nine months of concentrated, but collegial, work by the MSG.

As Ed Fogels noted in his testimony before the House Energy and Mineral Resources Subcommittee last October, a healthy mining industry and environmentally sound natural resource development are important to Alaska and the member states of the IMCC, and are in the best interests of the United States. Responsibly developing our mineral resources benefits our citizens and the country as a whole. However, to make this happen, we need cooperation rather than frustration from federal agencies similar to the actions I just mentioned. The states have developed effective and robust regulatory programs that should be relied on by federal agencies, not overridden by them.

States have been a central part of bringing about the modern era of mining regulation and environmental protection, and these processes have been very effective at correcting past mistakes. When federal agencies, such as the EPA, seek to expand regulations that impact mining, they are often duplicating existing, well-functioning programs. This duplication is not only inefficient, but it has real costs to the states and their residents who work to responsibly develop and protect natural resources. The states' familiarity with the specifics of their respective local mining industries is irreplaceable, and federal agencies must recognize the states' role in representing their citizens' economic and environmental interests. As Mr. Fogels noted in his testimony, they can do this in the following ways:

First, respect the primary role and responsibility of the states in managing, administering, and protecting their lands and waters. This role is grounded in the states' position as sovereign entities in the system of federalism recognized in the U.S. Constitution, and has been unequivocally acknowledged many times by Congress and the courts. For example, the Clean Water Act – one of the primary federal environmental statutes the EPA is tasked with administering – clearly states: "It is the policy of Congress to recognize, preserve, and protect the *primary* responsibilities and rights of the states to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter."

Second, respect the experience and expertise of state agencies who are often much more familiar than federal regulators with the particular circumstances and needs in their communities. States may be able to craft more practical solutions to challenges if their roles are not displaced by rigid federal processes that do not take into account state experience and expertise. In short, states are more likely to be problem solvers, looking for and finding solutions that work well for their environment and their economy. That's why they are often referred to as "laboratories of democracy".

Lastly, defer to, and build on, the successful programs that are already in place. New programs do not need to be built from the ground up at the federal level, as this will duplicate many of the well-functioning processes that are established and well-managed by the states. This will ensure that the expertise of both the states and of other federal agencies can be used efficiently. Collaboration with and support for state programs should be the focus of new federal initiatives.

Local effects, both positive and negative, are central reasons why mining regulation must preserve a strong role for the states. Federal resources and expertise should not be disregarded, but these complex regulatory activities must primarily rest with state regulators who are on the ground and who understand the full range of their respective states' interests. We need to reverse the tendency seen in the last several years to centralize agency decision making in Washington D.C. In this regard, IMCC adopted a resolution last year concerning the states' federalism concerns that was sent to Congress and which further expands on our concerns and recommendations regarding state and federal relations.

Of particular importance to Alaska in this regard have been several recent EPA initiatives. The first is the agency's potential rulemaking regarding financial assurance requirements for the hardrock mining industry, which could undermine existing state regulatory programs. IMCC and the Western Governors' Association have adopted resolutions that urge EPA to defer to the states on this matter and avoid potential federal preemption in this critical area of state regulation. Another initiative concerns a draft document prepared by EPA for its Science Advisory Board informally titled "the connectivity study" which addresses the interconnection of most waters in the entire U.S. and could serve as the basis for an expansive EPA rulemaking that would dramatically increase EPA's Clean Water Act jurisdiction. Unfortunately, the states have been provided the same opportunity to comment on the connectivity study as the average member of the public. This disregards the clear direction of the CWA to consult with, and retain the primary role of, state governments in managing land and water use. For example, the State of Alaska – representing almost 20% of the land mass of the United States – is not even featured in the maps in the connectivity study. There are no sections addressing its unique arctic environment or the complexities of permafrost. These kinds of omissions starkly illustrate the need to involve state regulators who know the specifics of their respective regions from the very beginning of these processes.

The EPA's attempts to displace successful state bonding programs for the hard-rock mining sector pursuant to its authorities under the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA) is an example of federal overreach and is another major concern for Alaska and the members of the IMCC. Despite the extensive expertise that state agencies have developed in the areas of bonding and reclamation, it is unclear how an EPA-administered hardrock bonding program would incorporate this expertise or how it could affect these successful state programs. This is an example of the need for federal agencies to respect and proactively consult with states on regulatory issues, rather than making us fight to provide information about the success of the programs we already have in place.

This process could have enormous negative impacts on the mining investment in the United States and our national interests by driving up capital costs. Reclamation bonds are capital commitments that companies must make to ensure cleanup and reclamation of mining activities are completed if the companies themselves go bankrupt or are unable to remediate their sites. Bonds are the financial cornerstone of environmental protection and are a cost that responsible operators must pay to receive mining permits. However, unsophisticated calculations by the EPA, uninformed by the vast experience of the states, would throw the bonding process severely out of balance. Excessive bonds do not make it more likely that a mine will be properly remediated, but they may prevent it from being developed entirely.

Many states raised questions and concerns about how the rulemaking is proceeding. IMCC and the Western Governors Association adopted resolutions that specifically address this matter in greater detail. If this rulemaking goes forward, the EPA should commit to deferring to state bonding programs and honoring their primary role of managing mining programs within their respective jurisdictions. Importantly, any rulemaking should be thoroughly vetted with state experts before its release so that EPA can benefit from their expertise regarding the content and implementation of the rule and EPA should structure the rule to avoid any federal preemption impacts.

Another concern is for Alaska and the states is a draft document prepared by EPA for its Science Advisory Board (SAB) that has been informally titled the "connectivity study." This is a several hundred page report that documents the interconnection of most waters in the entire United States, and will serve as the basis for an expansive EPA rulemaking that will likely dramatically increase CWA jurisdiction. The EPA has acknowledged as much, noting on its website that this report "will provide the scientific basis needed to clarify CWA jurisdiction" and listing the areas that the future rulemaking will generously exempt, such as "artificial ornamental waters" and "artificially irrigated areas that would be dry if irrigation stops."

The scope of CWA jurisdiction is absolutely critical to the management of land and water in every state throughout the country. It has been disputed for decades, including in multiple cases before the Supreme Court that have restricted EPA's prior interpretations of its authority. It is therefore absolutely critical that the states be extensively consulted during this rulemaking. Unfortunately, that isn't happening.

While the connectivity study is currently out for public comment and is not yet finalized, the EPA has been developing its rulemaking in tandem with the study, which EPA states "provide[s] the scientific basis needed" to justify its development. Troublingly, a draft proposed rule has already been sent to the Office of Management and Budget (OMB) in the White House for interagency review. While the State of Alaska and many of the IMCC states have pushed for a formal rulemaking to clarify CWA jurisdiction, this undertaking should not be conducted without the detailed involvement of the states. Additionally, it should not be conducted before the states have been able to comment on and review the report providing the underlying scientific basis for the rulemaking.

Our concerns about EPA's intrusions into state authority have been bolstered by a recent report from the American Legislative Exchange Council entitled "EPA's Assault on State Sovereignty" which found evidence that the "unprecedented regulatory encroachment" on behalf of EPA has produced significant negative effects to the economy. The report argues that since 2009, EPA has largely abandoned its cooperative federalism approach to its administration of such legislation as the Clean Water Act and the Clean Air Act, replacing the congressionally intended system with one in which state participation is effectively replaced by "friendly lawsuits" from environmental groups. The report also cites the fact that the EPA has raised the percentage of its regulatory disapprovals by 190 percent over the average during the last three presidential administrations, and has increased its takeover of state programs by 2,750 percent over the same period. ALEC's report argues that these developments are contrary to congressional intent in laws like the Clean Air Act, which specifically mandates that state and local governments should hold primary responsibility.

The problems I have discussed here today are difficult to solve. They will require a change in approach by federal regulators to increase rather than decrease consultation with states when dealing with mining regulation. Unfortunately, expressions of Congressional intent language like that found in the CWA are not always enough to stem federal overreach. There must also be continued oversight and leadership from Congress and the courts to ensure that states are treated as partners in the critical process of environmental protection. The benefits of such a stronger state and federal partnership will accrue to the whole nation. Increased federal efficiency will reduce both government expense and delays that affect projects. State primacy will ensure that all of the state's interests are represented in regulatory decision making. Environmental protection can continue to be strengthened by federal and state experts complimenting rather than duplicating each other's work.

Perhaps the greatest threat to our ability to work together, as noted by several state experts participating in the Council of State Government's new Federalism Task Force, is the acrimony and partisanship that seems to reign supreme in Washington, DC these days. The inability to get along in our Nation's capitol is creating problems in the states, according to Alaska Representative Craig Johnson, who serves as 2014 Chair of CSG West. "It seems now that if you don't agree with my policy, you're a bad person. Just because legislators or parties can disagree, that doesn't make anyone inherently bad;

it just means we disagree," he stated. "That civil discourse we've lost – that ability to debate without becoming enemies – is probably one of the greatest tragedies in American politics." Alaska Senator Cathy Giessel, the primary sponsor of the bill bringing Alaska into the Compact, noted in remarks that she presented to IMCC in October that partnerships are key to the success of not only the legislative process, but to the future of all Alaskans. Specifically with respect to mining and reclamation, she noted the importance of working together to achieve a healthy partnership between the people and the land, two of the most precious resources in the state.

The states are ready to take up this partnership. The membership of 26 states in the IMCC demonstrates this commitment, and provides an excellent venue for the further development of state and federal partnerships in the area of mining regulation. In the future, the country as a whole may want to discuss broader solutions, including review of the CWA, CERCLA, and other environmental laws to ensure that the states' expertise can be more effectively put to work in these areas. For example, the Canadian process of devolving resource management authority to provinces and territories may provide lessons that could be applied to our own system. The IMCC member states are committed to an open dialogue about these ideas.

In closing, I would like to say a word about minerals education and IMCC's program to recognize the industry that we regulate. In 1997 the IMCC formed the Education Work Group after discussions among the states regarding the importance of educating the public about mining and its role in the states' economies. Our focus was on the importance of minerals in daily living, mining and reclamation practices, and the role of the states as regulators of the industry. IMCC members recognized that having a well-informed public would be beneficial to states as we undertake our role as regulatory authorities, especially in our interactions with the public through public hearings and other contacts. There was much negative information about mining available to the public, but little about the importance of the industry or the strides that have been made over the years in assuring that mining was being done in an environmentally sensitive manner – a message that needed to be told.

Several members of IMCC's Education Work Group became involved with a national coalition for mining education which held an annual "Minerals Education Conference". IMCC staff and members of the work group participated through leading presentations during the conferences and speaking with attendees about the role of the states in regulating mining and about mining reclamation. Until that time, the coalition was made up solely of industry representatives and the public was not hearing from regulators.

Through contacts made at the conferences, work group members were invited to attend and participate in a well-established annual hands-on teacher workshop hosted by the State of Nevada in partnership with the Nevada Mining Association and other industry groups. We learned much about how they ran their workshops, which reached hundreds of teachers throughout the state over the many years the program had existed (these workshops are still held annually in Nevada). The Nevada program served as a

prototype for three regional teacher workshops IMCC hosted over the next few years. The first was held in April of 1999, in Tulsa, Oklahoma, in conjunction with IMCC's annual meeting. A"Teacher's Minerals Education Notebook" was developed by IMCC for use in the workshops which included hands-on activities and other information resources. The Oklahoma workshop was well attended, drawing 50 school teachers from the state. They received a tote bag full of resources and classroom materials, along with rock and mineral kits to take back to their classrooms. These were made up primarily of materials and specimens donated by mining companies and associations across the nation. The teachers participated in a full day of hands-on classroom activities focused on minerals, mining, mine reclamation and general earth science. All of the activities, plus many more, were included in the IMCC notebook which teachers also took home with them. Members of the IMCC Education Work Group facilitated the hands-on sessions. Two more regional workshops were later held – one in Maryland, and one in North Carolina. The Maryland and North Carolina workshops included a second optional day of mine site tours for the teachers. All of the workshops were filled to capacity and were highly praised in evaluations submitted by participants. The workshops were intended to give the members of the work group practical experience to bring back to their states and apply to their respective efforts to educate the public at home. Indiana developed its own teacher workshop program as a result and continues to hold the annual workshops. Several other IMCC members took ideas from portions of the experience to develop other education initiatives within their states, such as in Maryland where their work group representative contacted the Board of Education and worked with them in developing updated earth science standards for the state which included hands-on activities for minerals and mining.

The work group also designed a reclamation poster featuring photos of actual reclaimed mine sites titled, "What Do These Places All Have in Common?" They are All Reclaimed Mining Sites." It includes an explanation about reclamation and a hands-on reclamation activity on the back written at a 5^{th} grade level of understanding. The posters were distributed at the national conferences, at the IMCC workshops, and by IMCC member states. It was updated a few years later with new photos and continues to be an often-requested and popular educational resource. I have several of them with me today for those who may be interested.

During a luncheon at IMCC's first workshop in 1999, Governor Frank Keating of Oklahoma addressed the teacher participants and IMCC's first Minerals Education Awards were also presented. Each year IMCC recognizes a school teacher or school with a $500 cash award for use on classroom materials and a plaque of recognition in the "Educator Awareness Category". An award is also presented each year in the "Public Outreach Category" in the form of a plaque of recognition to an industry, environmental, citizen or other group, or to a state government body. The awards are meant to encourage minerals education and recognize achievements in several areas such as providing educational outreach in an innovative manner that increases the level of understanding in the classroom and/or community about mining and its impact; promoting environmental stewardship while enhancing the understanding of issues associated with mining and natural resource development; and/or creating unique educational materials or curriculum

demonstrating the production and/or use of minerals and associated environmental protection.

In 2011, the winner of the Minerals Education Award in the public outreach category was Alaska Resource Education located here in Anchorage – a partnership between the Alaska Department of Education and private industry which focuses on teaching school students and teachers about Alaska's natural resources through their Alaska Resource Kit and Curriculum.

IMCC also developed a Minerals Education Calendar in 2009 which features a different mineral each month along with geologic information about the mineral and its uses, along with a hands-on classroom "activity of the month." The calendar was also enthusiastically received by teachers throughout the nation. The templates were sent to the member states so those who chose to do so could reprint and distribute the calendars within their states in future years.

Named after the charter executive director of IMCC, the Kenes C. Bowling National Mine Reclamation Awards were established to recognize outstanding achievements in reclamation and to promote reclamation on a national level. Since 1987 when the awards were established, each year there are two awards presented: one for coal and another for noncoal minerals. From time to time the Commission also presents an award recognizing the special efforts of a small operator. Beginning in 2003, the award was renamed the Floyd G. Durham Special Recognition Award for a Small Operator, in memory of a long-time friend and representative to the Compact from Arkansas.

Competition for the awards is limited to IMCC states with each state authorized to make one nomination in each category. To be eligible, a mining company must have been actively mining and/or reclaiming the site during the 12-month period prior to the nomination.

The IMCC Reclamation Awards Program is intended to identify and recognize companies and individuals who maintain compliance with regulatory requirements and apply innovative techniques to reclaim land following mining activities. Through these awards, the IMCC is commending companies that have taken extra efforts to implement techniques which protect people and the environment from any adverse effects of mining, while at the same time allowing access to minerals that are vital to our nation's economy and the well-being of our society.

The IMCC Reclamation Awards are presented at the IMCC Annual Meeting and are judged on criteria which include: compliance; contemporaneous reclamation; drainage; bond release; and innovative practices. Past winners include sites from across the country and encompass a wide range of reclamation circumstances and results, including remining, prime farmland, approximate original contour, highwalls, reestablishment of drainage patterns, reconstruction of stream channels, and development of wildlife habitat, among others.

In conclusion, I hope I have given you a better perspective about the role and work of IMCC on behalf of Alaska and our other member states. We welcome the opportunity to work with those who share our mission, goals and objectives as we seek to balance the need for the development of our rich and abundant mineral resources and the protection of the environment in which they are found. As our small but mighty staff of two full-time persons attempts to keep all the plates spinning with the active assistance of our member state representatives, we are motivated by the words of former Speaker of the House Newt Gingrich who said "Perseverance is the hard work you do after you get tired of doing the hard work you already did." We look forward to persevering in the years to come to strongly advocate for state primacy and states rights in the minerals arena. Thanks again for having me. I would be happy to answer any questions you may have.