S. HRG. 108–533

ABANDONED MINE LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 2049

TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO REAUTHORIZE COLLECTION OF RECLAMATION FEES, REVISE THE ABANDONED MINE RECLAMATION PROGRAM, PROMOTE REMINING, AUTHORIZE THE OFFICE OF SURFACE MINING TO COLLECT THE BLACK LUNG EXCISE TAX, AND MAKE SUNDRY OTHER CHANGES

AND

S. 2086

TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO IMPROVE THE RECLAMATION OF ABANDONED MINES

MARCH 11, 2004

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ABANDONED MINE LEGISLATION

THURSDAY, MARCH 11, 2004

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:01 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Craig Thomas presiding.

OPENING STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. We will go ahead and get started on time. I am substituting for the chairman this morning. So I welcome all of you here.

We are here, of course, to talk about the Abandoned Mine Land Reclamation Program Extension and Reform Act of 2004. I think there will be a number of people who have an interest in it.

Let me just make a comment here. Of course, as you know, being from Wyoming, I am very much interested in this issue. I have a bill that I introduced to extend and reform the abandoned mine program. AML was created, as you know, by the Surface Mining Control Act in 1977 and funded through a fee collection process. That expires the 30th of September of this year.

Cost estimates to reclaim the lands were originally about $6 billion. The vast majority of the sites were located in the Eastern United States. Today nearly 93 percent of the priority problems are still east of the Mississippi.

Over the years, collection has generated about $6 billion in revenue. By law, these funds were allocated to the producing State or Indian tribe and the Federal Government in equal 50/50 shares. How the money is spent is to be defined by the statute.

We are here today to debate reauthorization. Several proposals are circulating and a wide range of issues have to be addressed, of course. The issues are somewhat contentious and divisive and complicated. They go well beyond the simple reauthorization of the AML fee. So we have lots of interest in it.

I remain optimistic and I think it is necessary for us to reach some consensus. I think we all agree that reclaiming mine sites is a national priority. The public health and safety of our citizens who live in the immediate vicinity of these sites must be protected. My constituents have stepped up to the plate and aided in this effort and will continue to do so.

But the people and the companies of Wyoming have their limits. The burden is disproportionately falling on their shoulders. 50 per-

cent of the State and tribal share the Federal Government agreed to distribute has not been paid. States and tribes and coal companies have honored their commitments; the Federal Government has not.

It is ironic that for 27 years, 27 States and Indian tribes have waited for a portion of the AML fund. It did not matter if control of Congress or the White House was in the hands of the Republicans or the Democrats. Year after year, the Federal Government refused to honor its commitment to coal-producing States.

Today the Federal Government holds $1.1 billion of State and Indian tribe AML money. This is real money already collected and sitting in Treasury bills. It is time for these funds to be distributed to the States and tribes as intended in the 1977 Act.

I have heard people say the Federal Government has met its obligations. These people are quick to point out the law only requires State funds to be allocated and not authorized. Since the Government annually allocates funds, the argument goes, the commitment is fulfilled. That argument may work inside the beltway, but I am here to tell you that outside the beltway, it does not pass the straight-face test, not in Wyoming, Montana, West Virginia, Pennsylvania, Kentucky, Illinois, Indiana, Ohio, New Mexico, Colorado, Alabama, North Dakota, Virginia, Utah, or Texas, nor on the tribal lands of the Hopi, the Navajo, or the Crow.

This problem was created in a bipartisan fashion and I believe it can be fixed in a bipartisan fashion. I put forth a proposal recently that addresses AML obligations and the intent of the law.

My proposal directs more financial resources to historic mine sites. Everyone agrees this must be a primary focus of reauthorization and is a key element in my bill.

Second, I guarantee that certified States and Indian tribes receive the balance of the money currently owed them and ensure they remain eligible to receive money going forward. This differs significantly from the administration's proposal in that certified States and tribes are not guaranteed payment of the current balance. They receive no money going forward.

Third, fees paid by coal producers are reduced so that the amount collected more closely reflects the amount annually spent by the Federal Government. For too long, revenues have exceeded expenditures, leaving the AML fund with a $1.5 billion balance.

Finally, my proposal authorizes the program for 10 years, which is a relatively short period of time. Because of the failure of the Federal Government to fulfill its obligations over the past 27 years, to extend the program beyond 10 probably would be irresponsible.

So differences do exist on the other issues. It will be a challenge to work this out before the 30th of September, but certainly I am committed to it and committed to fulfilling the spirit of the SMCRA of 1977.

So I look forward to the testimony and would turn to the Senator from New Mexico.

[The prepared statements of Senators Dorgan and Santorum follow:]

PREPARED STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

I commend the Chairman and my colleagues on the Committee for holding this hearing to begin discussions on the reauthorization of the Abandoned Mine Lands (AML) program, and I look forward to working with the Committee on this important matter.

However, in reauthorizing this program I believe there are additional issues related to the coal mining industry that also merit the Committee's attention but are not included in either of the bills before us today.

For many years, I have supported the efforts of Senator Conrad and others to shore up the long-term financial condition of the Combined Benefit Fund ("Combined Fund"), which pays retired miners' health benefits as required by the Coal Act of 1992. This is relevant to today's hearing because the Combined Fund is funded by annual payments by certain coal companies and through transfers of accrued interest from the AML Fund.

The Combined Fund is expected to run out of money in the near future, so we will need to act again to stave off this looming health benefit crisis. Providing long-term financial stability for the Combined Fund will alleviate Congress of the need to scramble year after year to provide temporary financial relief through the appropriations process. Retired coal miners and their dependents shouldn't have to worry about whether their promised health benefits will be available in the future.

At the same time, I think we must address the inequities in the Coal Act of 1992. Let me take a moment to explain.

The Combined Fund was established by Congress in the Coal Act of 1992 to ensure that a group of designated coal miner retirees and their families would be provided with health benefits they were promised as part of their employment. However, since its inception the Combined Fund has been the target of controversy because it imposes significant funding obligations on many coal companies that have vehemently argued that they were no longer contractually obligated to pay for such benefits. Frankly, I believe the Coal Act of 1992 overreaches in some cases. And that's why I have supported past efforts to provide relief in those instances.

Over the years, we have come very close to addressing this matter to the satisfaction of all interested parties. But, a comprehensive and long-term solution for stabilizing the Combined Fund and providing some equitable relief to "reachback" and other impacted coal companies has now eluded us for more than a decade.

Having said this, I believe that reauthorizing the AML program provides an opportunity to address the financial woes of the Combined Fund and the related "reachback" problems.

We should fix this problem in a manner that will secure coal miner retiree health benefits over the long term, while providing some measure of deserved relief to those companies which were unfairly impacted by the Coal Act of 1992. At this time, I would also like to submit for the record a letter signed by five of my Senate colleagues expressing their views about addressing the "reachback" and other issues.

I understand there is a question about whether the "reachback" issue comes under the jurisdiction of this Committee. But if we are going to reauthorize and reformulate the AML program, I think that the Combined Fund solvency and "reachback" issues should be addressed at the same time. Thank you and I look forward to working with members of this Committee to find a just and reasonable resolution to this issue.

U.S. SENATE,
Washington, DC, March 24, 2004.

Hon. PETE DOMENICI,
Chairman, Energy and Natural Resources Committee, 127 Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN DOMENICI: As the Senate Energy and Natural Resources Committee begins its work on the reauthorization and reform of the Abandoned Mine Land (AML) program, we want to highlight three related issues to the coal mining industry that require the Committee's attention this year.

As you know, for more than a decade a group of companies, now commonly referred to as Reachbacks, have been burdened with a heavy and inequitable financial tax burden imposed on them by the Coal Act of 1992. In that legislation, Congress scrapped a long history of dealing with the issue of health care benefits for retired coal miners through collective bargaining, and instead mandated that the Reachback companies assume liability for these health care benefits. Many of the Reachback companies had been out of the coal mining business for decades and had

never contractually agreed to pay for the health care costs of former employees. In the ensuing years this abrupt imposition of such a new financial burden on the Reachback companies has driven a number of them into bankruptcy and put others perpetually on the brink of financial ruin. Even those who have survived have paid tens of millions of dollars for these health care benefits for those former employees.

The Reachback companies should never have had this burden imposed on them in the first place. In all of our history, Congress has never imposed such a retroactive burden on any other group of companies. Congress must now correct this grave injustice and determine another method of paying for health care benefits for retired coal miners. Over the years, a number of formal proposals to accomplish this have been put forward in the House and Senate. We believe that S. 1756 is a good example of what would be an appropriate way of addressing this inequity while at the same time preserving health care benefits for retired coal miners.

At the same time, some of the companies who are paying for the health care costs of certain former employees under the Coal Act of 1992 would like the authority to pre-fund their financial obligations under the law. Under the Coal Act, these liabilities attach to all related entities of a Reachback company, regardless of whether they ever engaged in the business of mining coal. The consequences of this make it impossible for such related entities to operate in a financially sound fashion. The ability to pre-fund these obligations would protect both the companies' related entities as well as the future health care premiums for the retirees.

Finally, while the focus of this letter is on the Reachbacks, it is critically important that any legislation in this area refund the improperly collected premiums from the "Super Reachback" companies. The Supreme Court concluded that these, and similarly situated companies, should never have been assessed premiums to finance the Combined Benefit Fund.

Now is the time to address all of these issues related to the Coal Act of 1992. Under existing law and the various proposals to amend current AML law, some of the accumulated interest from the AML fund.is already being used to pay for the health benefits of certain retired coal miners. Thus, the Reachback and AML issues are already intertwined, and dealing with Reachback reform in the context of AML reform makes even more sense. We appreciate your attention to our concerns and hope you will make them a part of your reauthorization effort.

Sincerely,

George Allen,
U.S. Senator.

Charles Grassley,
U.S. Senator.

John Warner,
U.S. Senator.

Thad Cochran,
U.S. Senator.

Kay Bailey Hutchison,
U.S. Senator.

PREPARED STATEMENT OF HON. RICK SANTORUM, U.S. SENATOR FROM PENNSYLVANIA

Mr. Chairman and members of the committee, thank you for the opportunity to submit this statement regarding the critical environmental issue of abandoned mine reclamation. The Abandoned Mine Reclamation Fund was created in 1977 to address environmental hazards created by historic coal mining, such as open pits, coal refuse spoil piles, old mine openings and polluted streams. These impacts are severe and still far too prevalent today. As this committee and the full Senate consider Abandoned Mine Land (AML) reauthorization, it is vital that the program be crafted to target the most serious problems.

The vast majority of AML problems are located in states with high historic production. Historic production records show that the eastern United States accounts for 94 percent of all the AML problems. My commonwealth of Pennsylvania is no exception. The flip side of my state's proud role in the industrial legacy of our nation is that one-third of all mining legacy problems are in Pennsylvania. Abandoned coal mines have adversely impacted at least 44 of Pennsylvania's 67 counties, covering 189,000 acres of land and approximately 3,100 miles of streams.

Under the current structure, however, insufficient funding is flowing to the states with the greatest need. A much greater percentage of grant dollars is allocated to states on the basis of current production, even though there is no correlation between the current production state share and the extent of the AML problem in that

state. Conversely, there is a direct relationship between a state's historic production and the extent of its AML problem.

Funding per capita in Pennsylvania is disproportionately lower than funding per capita in other states with less-severe damage. In some states, the most hazardous AML sites have already been eliminated and funds are being spent on low priorities; other states are not scheduled to finish their top priorities for decades. As an example, my state receives $16 per capita while other states receive $3,000 per capita even though there are 1.6 million people potentially at risk in my state, compared to 10,000 or fewer people potentially at risk in other states.

In addition to providing for the most devastated areas, it is important that AML legislation contain remining provisions that allow states to maximize reclamation efforts with limited available funding.

The very purpose of the program is to assist those states with abandoned mine problems, and I believe that the proposals of the Office of Surface Mining (OSM) and legislation such as S. 2049 are a positive step in restoring the original intent of this program. Accordingly, I urge the Chairman and this committee to consider the states with legacies of environmental damage and ensure they receive the resources necessary to promote public health and safety and restore our fish and wildlife habitats.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Well, thank you very much, Mr. Chairman, for having the hearing. I think this is a very important issue, and I appreciate all the witnesses being here.

You have recounted much of the history of this.

The work of this program is far from done. As I understand it, the Office of Surface Mining estimates that there are about $3 billion worth of priority 1 and 2 problems that still pose a threat to public health and safety and about $3.6 billion worth of priority 2 general welfare problems that remain unreclaimed.

In my home State of New Mexico, the AML funding is used to remediate not only abandoned coal mines, but also very importantly the abandoned hardrock mine sites.

I understand that non-coal reclamation work is also important on several of the Indian reservations, including the Navajo reservation. I am very pleased that President Shirley is here to speak for the Navajo Nation today, and I look forward to his testimony. I want to ensure that funding for this non-coal work is continued.

Since 1992, the interest from the AML fund has served as a source of revenue to address another crucial issue, that is, coal miner retiree health benefits. Providing such benefits is obviously a difficult and ongoing issue that needs to be addressed. The legislation before the committee today addresses the issue. I am interested in ensuring that we do right by these retired coal miners, and I look forward to hearing from the witness we have from the United Mine Workers of America.

I also want to just underscore my view that it is essential that tribes be treated on parity with the States under this important program, and I believe that is the position that Governor Shirley will advocate today. I appreciate again his being here.

I do think we also have to also look at the budgetary impacts of whatever we enact if we decide to pursue a direct spending option. I think that, as I said, the issues are extremely important.

I think it is good that we are having this hearing to get these different points of view. Thank you.

Senator THOMAS. Thank you, Senator. Thank you for being here.

We have a great panel this morning. The Honorable Jeffrey Jarrett, Director of the Office of Surface Mining, Department of the Interior. Mr. Steve Hohmann, director, Division of Abandoned Mine Lands, the State of Kentucky, and he is also testifying on behalf of the Interstate Mining Compact Commission. Mr. Evan Green, administrator of the Abandoned Mine Land Division, the State of Wyoming. Mr. Joe Shirley, president, Navajo Nation, Washington. Mr. Charles Gauvin, president and CEO of Trout Unlimited. And Micheal Buckner, research director of the United Mine Workers.

Gentlemen, thank you. Your full statements will be put into the record, and if it is possible to make a summary of them, we will have the clock going here at 5-minute intervals. If you can do that, we would appreciate it.

Senator BINGAMAN. Mr. Chairman, just before the witnesses start, I do have a statement by the Secretary of Energy, Minerals and Natural Resources from the State of New Mexico that she asked me to try to have included in the record, and I would appreciate it if that could be done.*

Senator THOMAS. It will be done, Senator.

Mr. Jarrett, would you like to begin.

STATEMENT OF JEFFREY D. JARRETT, DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Mr. JARRETT. Thank you, Senator. Mr. Chairman and members of the committee, I really appreciate the invitation to be here to talk about what we think is one of the most important programs that OSM is responsible for.

Since the AML program was enacted in 1977, we think that the States have done a tremendous job and have accomplished a lot. Over 260,000 acres of mine lands have been reclaimed. Nearly 3 million feet of dangerous high walls have been eliminated and the hazards associated with 27,000 open portals and shafts have been eliminated.

But the job is not finished. The State estimate, as you pointed out, Senator Bingaman, is $3 billion is needed for construction alone on priority 1 and priority 2 health and safety problems.

We have in this country about 3.5 million citizens who live within 1 mile of these dangerous sites, and often that proximity to these sites results in tragedy. From time to time, I get newspaper accounts of some of those tragedies like the young man in Oklahoma who dropped his pocketknife into an abandoned mine hole and crawled in to retrieve the knife and find the knife, where he died from the dreaded black damp, lack of oxygen. Or the boy in Pennsylvania who plummeted 450 feet to his death at an abandoned anthracite mine, bringing the total to three fatalities at that same site.

Secretary Norton and I were at that site just a few weeks ago. It remains unreclaimed, and the reason it is unreclaimed is because the State of Pennsylvania had to make spending choices. Instead, they spent their money reclaiming another site that had

*The statements can be found in the appendix.

claimed 10 lives before it was finally reclaimed just a few years ago.

While there is no national reporting system for accidents or fatalities at abandoned mine sites, we know from anecdotal information provided by the States that these are not isolated cases. We have reports of 45 fatalities in Pennsylvania's anthracite region alone over the past 30 years; 11 fatalities in Oklahoma in the past decade, enough deaths that we know it is time to finish this job.

We are here today to discuss two bills, the administration's bill, S. 2049, which was introduced by Senator Specter, and S. 2086, introduced by Senator Thomas. I want to personally thank Senator Thomas and Senator Specter for their leadership in advancing a resolution to the difficult issues that will allow us to move forward and finish the job of making coalfield citizens safer.

Both bills, we believe, satisfy our primary objective of reauthorizing our fee collection authority. Both bills recognize the inherent problem with the current formula. Both bills focus more AML resources on the most dangerous abandoned mine land sites. Obviously, if one believes that the primary objective of this program is to reclaim abandoned mine land sites on a priority basis, we believe that the administration's proposal gets us there in the most effective and efficient way.

For the past 18 months, I and my staff have spent considerable time meeting with Governors, with coal industry representatives, with members of Congress, with the environmental community, with my colleagues in the States to try to get a better understanding of what all of those stakeholders think we need to accomplish with this reauthorization.

What we found was substantial agreement that we do need to reauthorize fee collection authority. There is substantial agreement that fundamental changes need to be made to this program, but that is about as far as the agreement goes. Even over the past few weeks, as the stakeholders have had an opportunity to evaluate both of the proposals that we are here today to talk about, we have been able to revisit many of them, and I will tell you that many of those stakeholders support the administration's proposal. Many of those stakeholders propose Senator Thomas' proposal. Some of those stakeholders feel left out by both.

I understand that each of the stakeholders can and should fight for what is in their own best interest, but that is a luxury, quite frankly, that I did not have as I worked to develop the administration's proposal. It is a national problem. It requires a national solution, and we were constrained to devise solutions in the context of the existing AML program and in consideration of significant budget restrictions. There are a lot of competing demands for limited AML dollars, and choices had to be made. We chose first to focus on fulfilling a promise to coalfield citizens who are at risk from these dangerous sites. Our solution, simply put, is we need to put the money where the problem is.

I see a red light blinking, so I assume my time is about up. Thank you very much for being here. We look forward to working with this committee to resolve these critical issues.

[The prepared statement of Mr. Jarrett follows:]

PREPARED STATEMENT OF JEFFERY D. JARRETT, DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Mister Chairman and members of the Committee, thank you for the opportunity to participate in this hearing and to discuss the important issues raised by the approaching expiration of the Office of Surface Mining Reclamation and Enforcement's (OSM's) authority to collect the Abandoned Mine Land (AML) fee. In particular, I would like to thank Senator Specter for introducing the Administration's bill, S. 2049. In addition, I would like to thank Senator Thomas for introducing his bill, S. 2086. Both bills seek to reauthorize OSM's authority to collect the AML fee, set to expire on September 30, 2004, and to make positive changes to this important program. S. 2049 will solve problems with the existing program in a manner that is consistent with the Administration's budget and program priorities. We look forward to working with the Senate to reach agreement on the important issues surrounding the collection and use of the AML fee.

The Administration believes that the AML problem is a national problem that calls for a national solution. The Administration's legislative proposal seeks to focus more AML funding on the areas most damaged by this nation's reliance on coal for industrial development and wartime production, long before the establishment of reclamation requirements in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). We believe that shifting the program's focus to historic production, which is directly related to the AML problems that currently exist in so many states, and distributing future fees based on need, offers a national solution for reducing the current, ongoing threats to the health and safety of millions of citizens living, working and recreating in our Nation's coalfields.

While the Administration's bill and Senator Thomas's bill are not the same in every respect, they have much in common. With an estimated 3.5 million Americans who live less than one mile from a dangerous, high-priority abandoned mine site, both bills share the significant goal of protecting the lives, health and safety of people living in the coalfields; people who live with—and too often die as a result of the hazards of abandoned mine lands.

We cannot support the provisions in S. 2086 that call for additional funding because they are inconsistent with the Administration's budget and program priorities. Neither can we support the allocation provisions because they do not further the goal of expediting cleanup as quickly as those provisions contained in S. 2049. In addition, the Administration cannot support creating new mandatory spending programs.

BACKGROUND

Since the enactment of the Surface Mining Control and Reclamation Act (SMCRA) by Congress in 1977, the Abandoned Mine Land program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans. Specifically, more than 260,000 acres of abandoned coal mine sites have been reclaimed through $3.4 billion in grants to States and Tribes under the AML program. In addition, hazards associated with more than 27,000 open mine portals and shafts, 2.9 million feet of dangerous highwalls, and 16,000 acres of dangerous piles and embankments have been eliminated and the land has been reclaimed. Despite these impressive accomplishments, $3 billion worth of high priority health and safety problems remain to be reclaimed.

Even if we were to use all of the AML fees collected between now and September 30, 2004, the date the fee collection authority is scheduled to expire, as well as the unappropriated balance of $1.5 billion, we would still have insufficient funds to address the health and safety-related surface mining problems because of the fund's current distribution formula. Moreover, under the current distribution formula, it would take non-certified states an average of 47 more years to complete reclamation. In some cases, remediation would take nearly a century.

We do not believe the current allocation system will enable us to complete the job of reclamation in the way that Congress intended. However, we view the September 30th expiration of the current AML fee collection authority as an opportunity to reform that authority and the distribution formula, and put it on track to finish the job of reclaiming abandoned coal mine problems.

SMCRA'S FEE ALLOCATION PROBLEM

SMCRA requires that all money collected from tonnage fees assessed against industry on current coal production ($0.35/surface mined ton; $0.15/deep mined ton; and $0.10/lignite) be deposited into one of several accounts established within the AML fund. Fifty percent (50%) of the fee income generated from current coal pro-

duction in any one state is allocated to an account established for that state. Likewise, 50% of the fee income generated from current coal production on Indian lands is allocated to a separate account established for the tribe having jurisdiction over such Indian lands. The funds in these state or tribal share accounts can only be used to provide AML grant money to the state or tribe for which the account is established.

Twenty percent (20%) of the total fee income is allocated to the "Historic Production Account." Each state or tribe is entitled to a percentage of the annual expenditure from this account in an amount equal to its percentage of the nation's total historic coal production—that is, coal produced prior to 1977. As is the case with state or tribal share money, each state or tribe must follow the priorities established in SMCRA in making spending decisions using money from the historic production account. However, unlike the allocation of state or tribal share money, once the state or tribe certifies that all abandoned coalmine sites have been reclaimed, it is no longer entitled to further allocations from the historic production account.

Ten percent (10%) of the total fee income is allocated to an account for use by the Department of Agriculture for administration and operation of its Rural Abandoned Mine Program (RAMP).

The remaining 20% of the total fee income is allocated to cover Federal operations, including the Federal Emergency Program, the Federal High-Priority Program, the Clean Streams Program, the Fee Compliance Program, and overall program administrative costs.

In the early years of Abandoned Mine Reclamation Program, most of the fees collected went directly to cleaning up abandoned coal mine sites. Some states and tribes with fewer abandoned coal mine sites finished their reclamation work relatively soon. However, under current law, those states and tribes are still entitled to receive half of the fees collected from coal companies operating in their states. In the early years of the program this didn't cause a considerable problem, because the Eastern states, where 93% hazardous sites are located, were also the states where most of the coal was being mined and were, therefore, receiving the majority of the AML fees.

However, beginning in the 1980s, a shift occurred whereby the majority of the coal mined in this country began coming from mines in Western states. This shift revealed an inherent tension in the AML program which now allocates a large part of AML fees to states that have no abandoned coal mine sites left to clean up. By contrast, each year less and less money is being spent to reclaim the hundreds of dangerous, life-threatening sites. Currently, only 52 percent of the money is being used for the primary purpose for which is it collected reclaiming high priority abandoned coal mine sites. That percentage will continue to decline each year unless the law is reauthorized and amended and the fundamental problem is corrected.

The Administration's legislation accomplishes four primary objectives by:

- Extending the authorization of fee collection authority while balancing the interests of all coal states and focusing on the need to accelerate the cleanup of dangerous abandoned coal mines by directing funds to the highest priority areas so that reclamation can occur at a faster rate, thereby removing the risks to those who live, work and recreate in the coalfields as soon as possible;
- Honoring the commitments made to states and tribes under the current law;
- Providing additional funding for the 17,000 unassigned beneficiaries of the United Mine Worker's Combined Benefit Fund (CBF) while protecting the integrity of the AML fund; and,
- Providing for enhancements, efficiencies and the effective use of funds.

These objectives recognize the need to strike a balance that addresses both the ongoing problems faced by states with high priority coal-related health and safety issues while not placing those states where the majority of fees are currently generated at a disadvantage. The Administration's proposal achieves this balance in a fiscally prudent manner.

BILL ANALYSIS

A. Changes to the Allocation Formula

S. 2049 would change the current statutory allocation of fee collection which is progressively directing funds away from the most serious coal-related problem sites. All future AML fee collections, plus the existing unappropriated balance in the RAMP account, will be directed into a new single account. Grants to non-certified states or tribes, those states that still have coal problems remaining, will be distributed from that single account based upon historic production, which is directly related to the magnitude of the AML problems. As a result of these modifications, S.

2049 completes the reclamation of the highest priority work much faster than would happen under current law, while avoiding $3.2 billion in collections that would have been necessary under current law. S. 2049 will remove more people at risk from the dangers of health and safety coal sites (142,000 per year or an increase of 87%).

S. 2049 provides that no non-certified state or tribe could receive an annual allocation that would exceed 25 percent of the total amount appropriated for those grants each year. This provision would ensure that no one State receives too high of a percentage of the grants in any one year. Any State whose allocation would otherwise exceed this cap would recoup the difference in the program's latter years as other States and tribes complete their high-priority projects and are no longer eligible for future grants.

Existing state and tribal share accounts will not receive any additional fees collected after September 30, 2004. The current unappropriated balance in the state and tribal share accounts will be dealt with in one of two ways: 1). Certified states and tribes would receive the current unappropriated balances in their accounts on an accelerated basis in payments spread over ten years (FY 2005-2014), subject to appropriation. There would be no restrictions on how these monies are spent, apart from a requirement that they be used to address in a timely fashion any newly discovered abandoned coal mines. 2). Non-certified states and tribes will receive their unappropriated balances in annual grants based upon historic production. If a non-certified state or tribe completes its abandoned coal mine reclamation before exhausting the balance in its state share account, it will receive the remaining balance of state share funds in equal annual payments through FY 2014. Non-certified states and tribes that exhaust their unappropriated state share balances before completing their abandoned coal mine reclamation will continue to receive annual grants in amounts determined by their historic coal production from the newly-created single account.

In contrast to the Administration's proposal, S. 2086 would continue to allocate 50% of the fees collected in a state to that state or tribal share account, without regard to that state or tribe's coal reclamation needs. For certified states and tribes in which public domain lands are located and available for leasing, S. 2086 would amend current law to transfer from Federal revenues generated by the Mineral Leasing Act, on a proportional basis, an amount equal to the sum of the aggregate unappropriated amount allocated to the qualified state or tribe. Thereafter, an amount equivalent to the amount provided to the state or tribe from the Mineral Leasing Act would then be debited from that state or tribe's state share account and made available to the historic production account for use in reclamation. As a result, certified states and tribes with leasable public domain lands would receive their current unappropriated state share balance as well as an amount equivalent to their 50% state share distribution going forward. These payments would not be subject to Congressional appropriation, would have additional costs of as much as $750 million, and cleanup would take longer to complete than under S. 2049.

S. 2086 also makes provisions to certified states and tribes without leasable public domain lands to receive their unappropriated balances. Those payments are made from the unappropriated balance of the Rural Abandoned Mine Land (RAMP) account. In addition, these states and tribes are also guaranteed $2 million per year regardless of their coal reclamation needs.

B. Elimination of AML funding for the RAMP Program

S. 2049 amends SMCRA to remove the existing authorization of expenditures from the AML fund for the Rural Abandoned Mine Program (RAMP) under the jurisdiction of the Secretary of Agriculture. No funds have been appropriated for this program, which reclaimed lower priority abandoned mine land (AML) sites, since FY 1995. Elimination of this authorization would facilitate the redirection of AML fund expenditures to high-priority sites. Accumulated unappropriated balances in the RAMP account would be made available for abandoned coal mine reclamation.

S. 2086 also endorses eliminating future allocations to the RAMP fund, but makes portions of the accumulated unappropriated balance available for distribution to non-public land certified states.

C. AML Reclamation Fee Rates

S. 2049 modifies reclamation fee rates in an effort to closely match anticipated appropriations from the fund with anticipated revenues. The proposed changes would maintain the current fee structure while uniformly reducing the fee rates by 20% on average (15 percent for the five years beginning with FY 2005, 20 percent for the next five years, and 25 percent for the remaining years through September 30, 2018). Those rates are based on an analysis of coal production trends and the resultant impacts on reclamation fee receipts. The Administration's proposed uni-

form graduated fee reductions make the program revenue neutral and have the added benefit of resulting in lower costs to consumers who purchase coal-generated electricity. The new expiration date reflects the time required to collect revenues sufficient to reclaim all outstanding currently inventoried coal-related health and safety problem sites. Finally, existing language requiring the Secretary to establish a new fee rate after September 30, 2004, based on CBF transfer requirements would be removed.

The Administration's legislative proposal extends the fee collection authority for 14 years, to 2018. This extension would facilitate the collection of sufficient fees to enable all states and tribes with high priority mining-related health and safety issues to reclaim those sites in 25 years or less.

S. 2086 proposes to extend the fee collection authority for 10 years, but given its fee allocation proposal, it would take much longer to clean up the remaining high-priority sites, resulting in the need for another fee extension. S. 2086 also proposes to lower the reclamation fee rates by 10 cents per ton (about 29%) for surface mining and 20 percent for lignite and coal mined by underground methods.

D. United Mine Workers of America Combined Benefit Fund (CBF)

S. 2049 amends SMCRA by adding a new provision that governs transfers from the fund to the CBF for health benefits for unassigned beneficiaries. The Administration's bill would replace and improve upon the existing provisions in SMCRA by removing the $70 million per year cap, and by making interest credited to the account in prior years available. These measures would protect the integrity of the AML fund while providing additional monies to meet CBF needs for unassigned beneficiaries.

S. 2086 addresses this issue by maintaining the current restrictions (the lesser of $70 million, the interest earned in any one year, or the needs of the unassigned beneficiaries of the CBF) on interest distribution to the CBF until FY 2006 at which time any remaining interest from previous years will be made available for transfer to the CBF to meet its needs of the unassigned beneficiaries.

E. Minimum Program Funding

S. 2049 provides that no State or tribe with high-priority problem sites would receive an annual allocation of less than $2 million. This provision would ensure that States and tribes with relatively little historic production receive an amount conducive to the operation of a viable reclamation program.

S. 2086 requires a minimum annual grant of $2 million for all states and tribes regardless of their certification status. Any shortfalls in appropriations for this purpose are to be made up from the Federal Share account. The Administration is concerned that S. 2086 also adds Tennessee as a minimum program state regardless of the existing SMCRA requirements for a state to maintain an active regulatory (Title V) program before it is entitled to receive AML grants.

F. Remining

Both bills extend the remining incentives existing in current law, which provide reduced revegetation responsibility periods for remining operations and an exemption from the permit block sanction for violations resulting from an unanticipated event or condition on lands eligible for remining. S. 2049 makes these incentives permanent by removing the expiration date while S. 2086 extends the expiration date to 2014. Additionally, S. 2049 authorizes the Secretary to adopt other remining incentives through the promulgation of regulations, thereby leveraging those funds to achieve more reclamation of abandoned mine lands and waters. S. 2086 does not provide for the creation of additional remining incentives.

G. AML Reclamation Priority

S. 2049 preserves the autonomy of the states and tribes by maintaining the current priority structure and requires that expenditures from the AML fund on eligible lands and water for coal-related sites reflect the listed priorities in the order stated. S. 2049 focuses on collecting enough money to provide each state or tribe with sufficient funds to complete its highest priority AML sites. The Administration's bill will accomplish these objectives by providing funds for all States and tribes to finish in less time than under a continuation of the current program, on average 22 years sooner, but in many cases, decades sooner.

S. 2086 amends the priority system to eliminate the general welfare component of priorities 1 and 2, leaving public health and safety as the only elements of those priorities. S. 2086 also requires that priority 3 work be undertaken only in conjunction with a priority 1 or 2 project; eliminates priority 4 (public facilities); and eliminates priority 5 (development of publicly owned land). Finally, for state share and

historic production grants to non-certified States, S. 2086 requires strict adherence to the revised priority rankings.

Both S. 2049 and S. 2086 remove the existing 30 percent cap on the amount of a State's allocation that may be used for replacement of water supplies adversely affected by past coal mining practices. This change is consistent with the proposed legislations' goal of focusing fund expenditures on high-priority problems. The lack of potable water is one of the most serious problems resulting from past coal mining practices, particularly in Appalachia.

H. Emergency Reclamation Program

S. 2049 proposes amending the emergency reclamation program for abandoned mine land problems that present a danger too great to delay reclamation until funds are available under the standard grant application and award process. S. 2049 would revise this section by authorizing the Secretary to adopt regulations requiring States to assume responsibility for the emergency reclamation program. This change would promote efficiency and eliminate a redundancy in that potential emergencies would be investigated only by the State, not by both the OSM and the State, as occurs under the current program.

S. 2086 does not alter the existing emergency reclamation program structure.

I. Reclamation Set-Aside Programs

S. 2049 revises future reclamation set-aside program provisions to specify that expenditures from funds set aside under this program may not begin until the State or tribe is no longer eligible to receive an allocation from AML grant appropriations under SMCRA. The revised date in the Administration's proposal is more consistent with the purpose of this set-aside, which is to provide States and tribes with a source of funding to address abandoned mine land problems that remain or arise after funds are no longer available under SMCRA.

S. 2086 removes the authorization for this set-aside.

Both bills provide that states and tribes can set-aside up to 10% of their historic production grant funds in an interest-bearing trust fund for comprehensive abatement and treatment of acid mine drainage in qualified hydrologic units. Both bills provide for simplification and streamlining of the requirements for the acid mine drainage treatment trust fund set-aside program, including removal of the requirement for Secretarial review and approval of individual treatment plans.

J. Completion of Coal Reclamation—Certification

S. 2049 establishes the conditions under which a State or tribe may certify that it has completed all coal-related reclamation of eligible lands and waters. Under the existing provisions, the State or tribe would then be eligible to spend its State share allocation on sites impacted by mining for minerals other than coal. The draft bill would amend this section by revising SMCRA to clarify that certification means that all coal-related high priority health, safety and environment reclamation has been achieved. This subsection previously did not specify which priorities must have been met. S. 2049 also allows the Secretary to make the certification for a State or tribe in which all coal-related reclamation work has been completed.

S. 2086 maintains current certification procedures.

K. Black Lung Excise Tax Collection and Auditing

S. 2049 authorizes the expenditures for collection and audit of the black lung excise tax. This revision would synchronize collections and allow OSM auditors to conduct audits of black lung excise tax payments at the same time as they audit payment of reclamation fees under SMCRA. It would promote governmental efficiency, eliminate redundancies, and reduce the reporting and record keeping burden on industry.

S. 2086 does not contain a similar provision.

L. Incidental Coal Extraction

S. 2086 adds a proviso to Title V of SMCRA which changes the interpretation of the term "government-financed" to exclude expenditures from the AML reclamation fund. This change would have the effect of nullifying long-standing practice that has resulted in significant environmental improvements and more efficient AML operation. This change would also have the effect of nullifying OSM's AML enhancement rule, which, as promulgated on February 12, 1999 (at 64 FR 7483), interprets the term "government-financed" to include AML reclamation fund expenditures. With this proposed change, any coal removed incidental to the reclamation of an AML site would require a mining permit. As a result, various AML sites with physically recoverable coal would remain unreclaimed because it would not be economically viable to undertake the reclamation based on coal receipts alone. In the alternative,

coal removed during the course of the AML reclamation project would be discarded, which is both inefficient and potentially damaging to the environment. To date, incidental coal extraction has brought about successful reclamation and inventory reduction of AML sites without any known problems.

S. 2049 makes no change to this provision and maintains existing provisions contained in SMCRA.

CONCLUSION

The problems posed by mine sites that were either abandoned or inadequately reclaimed prior to the enactment of SMCRA do not lend themselves to easy, overnight solutions. To the contrary, these long-standing health and safety problems require legislation that strikes a balance by providing states and tribes with the funds needed to complete reclamation, while fulfilling the funding commitments made to states and tribes under SMCRA. This is the inherent tension that currently exists in SMCRA. We look forward to an open and a productive debate to amend and reform OSM's fee collection authority to fulfill the mandate of SMCRA to address these high priority healthy and safety concerns in a manner that directs the funds to the states and tribes where they are needed. As noted earlier, the current fee collection authority is scheduled to expire in just over six months, on September 30, 2004. There is much work to be done to ensure that reforming the AML fee collection authority, allocation formula, and other needed reforms become a reality. We believe that S. 2049 addresses these problems in a manner that is fair to all States and is consistent with the Administration's budget and program priorities.

We stand ready to assist the Committee. We thank the Committee for this opportunity to present the Administration's views on these important legislative proposals and we look forward to working together as Congress continues consideration of these important measures.

Senator THOMAS. Fine. Thank you very much, sir. We appreciate that.

Mr. Hohmann.

STATEMENT OF STEVE HOHMANN, DIRECTOR, KENTUCKY DIVISION OF ABANDONED MINE LANDS, KENTUCKY DEPARTMENT FOR NATURAL RESOURCES

Mr. HOHMANN. Good morning, Mr. Chairman. My name is Steve Hohmann. I am director of the Division of Abandoned Mine Lands within the Kentucky Department for Natural Resources, and I am appearing here today on behalf of the National Association of Abandoned Mine Land Programs, the Interstate Mining Compact Commission, and the Commonwealth of Kentucky.

First, on behalf of the NAAMLP and the IMCC, I will address the views of the States and tribes regarding the future collection of AML fees, adequate funding, and related legislative adjustments to title IV of SMCRA.

The States and tribes, through the IMCC and NAAMLP and the Western Governors Association, have over the past several years advanced proposed amendments to SMCRA that reflect a minimalist approach to adjusting the law. They are as follows: to extend fee collection authority for at least 12 years; to adjust the procedure by which States and tribes receive their annual allocation of monies to address AML problems; to eliminate the rural abandoned mine program and to reallocate those funds to the historic coal production share; to assure adequate funding for minimum program States; to address a few other select provisions that will enhance the overall effectiveness of the AML program, including remining incentives, State set-aside programs, handling of liens, and enhancing the ability of States to undertake water line projects; and finally, to address how the accumulated, unappropriated State and tribal share balances in the fund will be handled,

while at the same time assuring that an adequate State share continues for the balance of the future.

The States, through these associations, welcome the opportunity to work with your committee, Mr. Chairman, and other affected parties to address the myriad issues that attend the future ability of the AML fund to address the needs of our coalfield citizens.

So our overriding concerns can be summarized as follows.

Adequate, equitable, and stable funding must be provided to the States and tribes on an annual basis.

The unexpended State share balance in the AML trust fund should be distributed to all States and tribes as expeditiously as possible.

State and tribes should remain the primary delivery mechanism for AML funds.

Funding for the minimum program States must be restored to the statutorily authorized amount of not less than $2 million annually.

Any adjustments to the AML program should not inhibit or impair any remining opportunities or incentives.

Any adjustments to the existing system of priorities must consider the impacts to existing State set-aside programs and to current efforts to remediate acid mine drainage.

Any adjustments to the current certification process should not inhibit the ability of the States and tribes to address high priority non-coal projects.

And any review or adjustments to the current inventory should account for past discrepancies and provide for the inclusion of legitimate new sites.

Finally, any changes must be presented and considered in a judicious environment that allows for all affected parties' concerns to be addressed, including coalfield residents. In this regard, it should be kept in mind that any legislative adjustments that significantly reduce State AML funding or efficacy of State programs could lead State legislatures, who are facing difficult budget times, to seriously reconsider SMCRA primacy entirely, both title IV and title V. Hence, the importance of assuring that the current State share provisions in SMCRA are held harmless in any proposed restructuring of the current allocation formula.

Over the past 25 years, tens of thousands of acres of mine land have been reclaimed, thousands of mine openings have been closed, and safeguards for people and property and the environment have been put in place. Please remember that the AML program is first and foremost designed to protect public health and safety.

Since AML grants were first awarded to the States and tribes, over $3 billion has been infused into the local economies of the coalfields. The AML expenditures over the past 24 years, have returned over $4 billion to the economy and have created some 150,000 jobs.

The National Association of Abandoned Mine Land programs and the IMCC appreciate the opportunity to present this testimony today, Mr. Chairman, and look forward to working with you in the future.

Now the remainder of my testimony will be on behalf of Senator Bunning's home State, the Commonwealth of Kentucky.

Currently there are at least three different versions of an AML reauthorization proposal in Congress. The two proposals under discussion here today are S. 2049 and S. 2086. There exists significant differences and some similarities in the methods each bill employs to attain the same goal. So with that in mind, Kentucky advocates the general approach outlined in S. 2086 introduced by Senator Thomas, with appropriate modifications.

In its present form, S. 2086 contains the following items that Kentucky supports: provides immediate and long-term significant funding increases to all States and tribes; targets funding at historic coal problems by redefining the priorities for expenditure; maintains the State share into the future; eliminates the 30 percent cap on water line expenditures; maintains the status quo concerning administration of the AML emergency program; provides remining incentives into the future; reduces AML fees to operators in a manner that does not adversely affect State grants; and returns State share balances to certain certified States with non-AML funds and redistributes the replaced State share balances to the historic coal share.

Additionally, Kentucky is supportive of several modifications to S. 2086, mainly to make the bill reflect certain provisions of H.R. 3796, the Cubin-Rahall bill now before the House. Those modifications are: extending the program to 2019; retain the AML enhancement rule; and ensure the solvency of the UMWA Combined Benefit Fund.

Mr. Chairman, of the bills now before the Senate, S. 2086, while needing adjustments, comes closest to satisfying the immediate and long-term AML needs of Kentucky.

The AML program is vital to the citizens residing in Kentucky's coalfields. The Federal Office of Surface Mining estimates that over 400,000 Kentuckians are at risk because they live within 1 mile of an abandoned coal mine hazard.

Last year alone, the Kentucky Division of Abandoned Mine Lands received 831 complaints from coalfield residents and their elected officials reporting hazardous conditions from abandoned coal mines. This marked a 57 percent increase from the previous year.

And July 1 to December 31, 2003, the Kentucky AML program abated 82 abandoned coal mine hazards. Abatement of these hazards directly eliminated the risk to 476 citizens and indirectly benefitted another 851. During that same period, Kentucky restored 4 miles of streams with the Abandoned Mine Land program and completed six water line projects providing potable water to 704 households and businesses. And some pictures depicting Kentucky's AML reclamation are on the posters displayed to my right.

To date Kentucky has received $317 million from its State share though annual grants, leaving a balance in Kentucky's State share account of over $120 million. Without question, many more AML sites in Kentucky would have been reclaimed had Kentucky received its full return of State share money.

The Kentucky AML grant has remained essentially static over the last 8 to 10 years, hovering around $16 million to $17 million. However, each year the amount of funding devoted to reclamation

is slightly reduced because of the unavoidable increase in the cost of reclamation construction and materials.

Mr. Chairman, the only solution to this dilemma and to addressing Kentucky's overwhelming AML need is an immediate, significant increase in AML funding to the commonwealth. The approach outlined in S. 2086 is more likely to adequately address this need for Kentucky than other Senate proposals.

Thank you for the opportunity to testify here this morning, Mr. Chairman.

[The prepared statements of Mr. Hohmann follow:]

PREPARED STATEMENT OF STEVE HOHMANN, DIRECTOR, KENTUCKY DIVISION OF ABANDONED MINE LANDS, KENTUCKY DEPARTMENT FOR NATURAL RESOURCES, ON BEHALF OF THE COMMONWEALTH OF KENTUCKY

Mr. Chairman, Senator Bunning, members of the Committee, thank you for inviting me to testify. I am present on behalf of Senator Bunning's home state, Kentucky, to remark on pending legislation to reauthorize the Abandoned Mine Land (AML) fee and revamp the national AML Program. Kentucky is very encouraged by the recent activity aimed at AML reauthorization. With the AML fee expiration looming in September, now is the time to address the critical issue of reauthorization and to direct the future course of the AML program.

Currently there are at least three different versions of an AML reauthorization proposal in Congress. The two proposals in the Senate are S. 2049, the Specter Bill, and S. 2086, the Thomas Bill. Both of them extend the period for fee collection, increase funding to states with historic coal problems, and reduce the financial burden on the western states. There exist significant differences and some similarities in the methods each bill employs to attain the same goal.

With that in mind, Kentucky advocates the general approach outlined in S. 2086, introduced by Sen. Thomas of Wyoming, with appropriate modifications. In its present form, S. 2086 contains the following items that Kentucky supports:

1. Provides immediate and long-term, significant funding increases to all states and tribes.
2. Targets funding at historic coal problems by redefining the priorities for expenditure. Kentucky prefers this approach to one that changes the method of funding distribution to target historic coal problems.
3. Maintains the state share into the future and ultimately returns these funds based on the state share balance, or some equivalent method, keeping the state share promise. Kentucky has the third largest state share balance, and it is critical to return those funds to the state to meet our reclamation needs. Kentucky has always used all its historic coal and state share funding to address high priority coal problems.
4. Eliminates the 30% cap on waterline expenditures. Coupled with increased funding, this would allow Kentucky more discretion and ability to address the vital task of providing clean drinking water to the citizens in our coalfields. Provides immediate and long-term, significant funding increases to all states and tribes.
5. Maintains the status quo concerning the administration of the AML emergency reclamation program. OSM already has the procurement guidelines in place, alternative environmental review procedures, and better access to critical funding to operate the emergency program. Kentucky believes that assumption of emergency reclamation would over burden Kentucky's already cash-strapped, normal reclamation program.
6. Provides Remining incentives into the future.
7. Reduces AML fees to operators in a manner that does not adversely affect state grants. Kentucky coal operators are struggling to compete in today's energy market and any financial relief received by a reduction in the AML fee would aid the Kentucky industry. A healthy coal industry is vital to our Commonwealth's economic prosperity.
8. Returns state share balances to certain certified states with non-AML funds, and redistributes the replaced state share balances to the historic coal share.

Additionally, Kentucky is supportive of several modifications to S. 2086, mainly to make the bill reflect certain provisions of H.R. 3796, the Cubin/Rahall Bill, now before the House. The modifications are:

1. Extend the program to 2019.
2. Retain the AML Enhancement Rule.
3. Ensure the solvency of the UMWA Combined Benefit Fund.

Mr. Chairman, these are the provisions that Kentucky believes should be included in an equitable AML reauthorization bill. We feel that inclusion of these provisions in AML legislation will ensure that no state or tribe is forgotten in the future of the Abandoned Mine Land Reclamation Program. Of the bills now before the Senate, S. 2086, while needing adjustments, comes closest to satisfying the immediate and long-term needs of Kentucky. Kentucky is keenly aware that there are other approaches to attaining the same goals. With that understanding, and a true need to continue our reclamation efforts, Kentucky remains willing to work with Congress, states and tribes, OSM, industry, and citizen groups to forge a new future for the AML program.

The AML program is vital to the citizens residing in Kentucky's coalfields. It is the only program that offers relief to our citizens from the health and safety dangers created by past coal mining. The federal Office of Surface Mining estimates that over 400,000 Kentuckians are at risk because they live within one mile of an abandoned coal mine hazard. Kentucky currently has over $330 million in unfunded high priority reclamation problems listed in the National AML Inventory. This figure includes, 32,000 feet of unreclaimed highwall, 1,500 acres of landslides, 1,500 open mine portals, and 9,000 acres subject to flooding from streams choked with sediment and mine refuse. These problems remain even though the Kentucky AML program has eliminated thousands of mine hazards throughout the Commonwealth. And the unfunded problems list grows longer each year.

Last year alone the Kentucky Division of Abandoned Mine Lands received 831 complaints from coalfield residents and their elected officials reporting hazardous conditions from abandoned mines. There has been a marked increase in the number of complaints reported to the state from the previous year. All of these are new complaints, and based on experience we expect that roughly half are actually attributable to abandoned mining. This significant increase in complaints is due in part to greater than average precipitation in Kentucky over the past couple of years and increasing urban development into previously remote areas of the coalfields. Kentucky's ability to perform the reclamation necessary to resolve the problems cited in these complaints is solely dependent on the amount of AML funding Kentucky receives. Static or inadequate funding results in long delays from the time the complaint is received, to the time a reclamation project can be initiated to address the problem. Only significant, immediate increases in AML funding can remedy this difficulty.

Since its inception, the Kentucky AML program has completed 745 reclamation projects reclaiming over 1800 open mine portals, 2000 acres of dangerous landslides, 43 miles of polluted streams, 33,000 feet of unstable highwall, 300 acres of mine fires, and many other hazards created by old mines. Over the same period, the OSM federal reclamation program has conducted more than 1200 emergency projects at a cost of $130 million in Kentucky.

Recent statistics prepared by the Kentucky AML program highlight the benefit of AML hazard reclamation to coalfield citizens. From July 1 to December 31, 2003, the Kentucky AML program abated 82 abandoned mine hazards including 9 dangerous landslides, 3 unstable highwalls, 41 open portals, and 6 hazardous impoundments. Abatement of these hazards directly eliminated the risk to 476 citizens and indirectly benefited another 851. During that same time period Kentucky AML restored 4 miles of streams and completed 6 waterline projects providing water to 704 households and businesses.

The AML waterline program is a shining example of AML success in Kentucky. The Kentucky AML program expends 30% of each annual grant (the current limit allowed by law) to fund waterlines into areas where past mining has adversely impacted groundwater resources, rendering it unfit for consumption. Approximately one quarter million coalfield residents rely on groundwater as their primary drinking water source. To date Kentucky has completed 77 waterline projects providing clean, potable water to 9300 Kentucky households and businesses. The people served by these waterlines are generally in remote, rural areas that local water districts cannot afford to serve. The AML waterline program has been the only hope for those residents to receive a source of potable water. Fresh drinking water, free from contamination caused by mining, is a basic necessity that all citizens have a right to expect. Currently, Kentucky has a $15 million backlog of waterline projects waiting for construction funding.

Over the life of the AML program, Kentucky coal operators have paid more than $875 million into the AML Trust Fund. Fifty percent of that amount, $437.6 million,

is assigned to Kentucky's state share. To date, Kentucky has received $317 million from its state share through annual grants, leaving a balance in Kentucky's state share account of over $120 million. This unappropriated balance is part of the larger AML Trust Fund balance of $1.5 billion. Implicit in SMCRA is the promise that states would receive at least a 50% return on the amount of reclamation fees collected from within their borders. Without question, many more AML sites in Kentucky would have been reclaimed had Kentucky received its full return of state share money. It is important to note that any additional funding Kentucky receives, regardless of its origin as state or federal share, will be expended on high priority, coal-related hazard abatement and waterline projects.

Although the demands on Kentucky's AML program are increasing, our AML grant has remained essentially static over the last eight to ten years hovering around $16 to 17 million. However, each year the amount of funding devoted to reclamation is slightly reduced because of the unavoidable increase in the cost of reclamation construction and materials. Based on a random sample of project costs since 1996, Kentucky has seen prices for earthwork double, prices for gabion retaining walls increase 35%, and prices for rock channel lining increase 13%. The higher prices translate into less on-ground reclamation and a resultant increase in risk to the citizens of our Commonwealth from abandoned mine hazards. The only solution to this dilemma is an immediate, significant increase in AML funding to Kentucky.

The AML program has had many successes in Kentucky and throughout the nation, but as OSM has stated, "The job is not yet finished." In order to protect the present and future safety of our coalfield residents, Kentucky staunchly supports reauthorization of the AML fee and believes the approach embodied in the Thomas Bill, with key modifications, is the preferred option.

PREPARED STATEMENT OF STEVE HOHMANN, DIRECTOR, DIVISION OF ABANDONED MINE LANDS, KENTUCKY DEPARTMENT FOR NATURAL RESOURCES, ON BEHALF OF THE NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS AND THE INTERSTATE MINING COMPACT COMMISSION

Good morning, Mr. Chairman. My name is Steve Hohmann and I am Director of the Division of Abandoned Mine Lands within the Kentucky Department for Natural Resources. I am appearing here today on behalf of the National Association of Abandoned Mine Land Programs (NAAMLP) and the Interstate Mining Compact Commission (IMCC). The NAAMLP consists of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation's coal production. All of the states and tribes within the Association administer AML programs funded and overseen by the Office of Surface Mining (OSM). I am also representing IMCC, an organization of 20 states throughout the country that together produce some 60% of the Nation's coal as well as important noncoal minerals. Each IMCC member state has active coal mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the remediation of abandoned mines. I am pleased to appear before the Committee to discuss the future of the Abandoned Mine Reclamation Program, which is established under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In particular, I would like to address the views of the states and tribes under SMCRA regarding the future collection of AML fees from coal producers, adequate funding for our abandoned mine land programs, and related legislative adjustments to Title IV of SMCRA.

Recently, Mr. Chairman, we celebrated the 25th anniversary of the Surface Mining Control and Reclamation Act. During the past quarter of a century, significant and remarkable work has been accomplished pursuant to the abandoned mine lands program under SMCRA. Much of this work has been documented by the states and tribes and by OSM in various publications, especially during the past few years, including the twentieth anniversary report of OSM and a corresponding report by the states and tribes. In addition, OSM's Abandoned Mine Land Inventory System (AMLIS) provides a fairly accurate accounting of the work undertaken by most of the states and tribes over the life of the AML program and an indication of what is left to be done.

My comments today are intended to be representative of where I believe the states and tribes are coming from when we look to the future of the AML program. We strongly feel that the future of the AML program should continue to focus on the underlying principles and priorities upon which SMCRA was founded—protection of the public health and safety, environmental restoration, and economic development in the coalfields of America. Over the past 25 years, tens of thousands of

acres of mined land have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. Based on information maintained by OSM in its Abandoned Mine Land Inventory System (AMLIS), as of September 30, 2003, the states and tribes have obligated 94% of all AML funds received and $1.7 billion worth of priority 1 and 2 coal-related problems have been funded and reclaimed. Another $319 million worth of priority 3 problems have been funded or completed (many in conjunction with a priority 1 or 2 project) and $343 million worth of noncoal problems have been funded or reclaimed.

It should be noted that any monetary figures related to the amount of AML work accomplished to date are based on OSM calculations used for purposes of recording funded and completed AML projects in AMLIS. What they do not reflect, however, is the fact that a significant amount of money is spent by the states and tribes for related project and construction costs that do not find their way into the AMLIS figures based on how those numbers have been traditionally calculated by OSM. These costs (which amount to hundreds of millions of dollars for all states and tribes) include engineering, aerial surveys, realty work, inspections, and equipment—all of which are part of the normal, routine project/construction costs incurred as part of not only AML work, but of any construction-related projects. There is no dispute between OSM and the states and tribes about the legitimacy or nature of these items being a part of the true cost of AML construction projects. In fact, OSM's own Federal Assistance Manual for AML Projects recognizes these costs as "project and related construction costs". As a result, the actual amount of money that has been spent by the states and tribes for construction or project costs is approximately $2.9 billion—$2.6 billion of which was for coal projects and $.3 billion for noncoal projects. Also, of the $3.4 billion provided to states and tribes in Title IV monies over the years, only $500 million has been spent on true administrative costs, which reflects a modest average of 15%.

I could provide numerous success stories from around the country where the states' and tribes' AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states and tribes pursuant to the distribution of moneys from the Fund, have played an important role in achieving the goals and objectives set forth by Congress when SMCRA was enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal mining. Please remember that the AML program is first and foremost designed to protect public health and safety. Even though accomplishments in the inventory are reported in acreage for the sake of consistency, the bulk of state and tribal AML projects directly correct an AML feature that threatens someone's personal safety or welfare. While state and tribal AML programs do complete significant projects that benefit the environment, the primary focus has been on eliminating health and safety hazards first and the inventory of completed work reflects this fact.

What the inventory also reflects, at least to some degree, is the escalating cost of addressing these problems as they continue to go unattended due to insufficient appropriations from the Fund for state and tribal AML programs. Unaddressed sites tend to get worse over time, thus increasing reclamation costs. Inflation exacerbates these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. The inventory is also dynamic, which we believe was anticipated from the inception of the program. The states and tribes are finding new high priority problems each year, especially as we see many of our urban areas grow closer to what were formerly rural abandoned minesites. New sites also continually manifest themselves due to time and weather. For instance, new mine subsidence events and landslides will develop and threaten homes, highways and the health and safety of coalfield residents. This underscores the need for continual inventory updates, as well as constant vigilance to protect citizens. In addition, as several states and tribes certify that their abandoned coal mine problems have been corrected, they are authorized to address the myriad health and safety problems that attend abandoned noncoal mines. In the end, the real cost of addressing priority 1 and 2 AML coal problems likely exceeds $6 billion. The cost of remediating all coal-related AML problems, including acid mine drainage (priority 3 sites), could be 5 to 10 times this amount and far exceeds available monies.

A word about the plight of those states that have traditionally been labeled as "minimum program" states due to their minimal coal production and thus minimal AML fee collection: the evolving inventory concerns mentioned previously, as well as the increasing cost of undertaking AML projects, are both exacerbated in these states. Do not be misled by the term "minimum" when we speak of these programs, since many of these states have not been minimally impacted by pre-SMCRA min-

ing. The minimum program states struggle to simply maintain a cost-effective AML program with their most recent annual $1.5 million allocations, much less undertake AML projects that can approach one million dollars. Without the statutorily authorized amount of $2 million mandated by Congress in the 1990 amendments to Title IV of SMCRA, these states will continue to be forced to fund or even delay high priority projects over several years. Not only is this dangerous, it is not cost-effective. As your Committee considers amendments to Title IV of SMCRA, we urge you to resolve the dilemma faced by the minimum program states and to provide meaningful and immediate relief.

When considering the economic impacts of potential AML legislation, it should also be kept in mind that, since grants were first awarded to the states and tribes for AML reclamation, over $3 billion has been infused into the local economies of the coalfields. These are the same economies that have been at least partially depressed by the same abandoned mine land problems that the program is designed to correct. In fact, those dollars spent in economically depressed parts of the country, such as Appalachia, could be considered part of an investment in redevelopment of those regions. The AML program translates into jobs, additional local taxes, and an increase in personal income for the Nation's economy. For each $1 spent on construction, $1.23 returns to the Nation's economy. For each $1 million in construction, 48.7 jobs are created (U.S. Forest Service IMPLAN, 1992 data for non-residential and oil and gas construction). The AML expenditures over the past 25 years have returned over $4 billion to the economy and have created some 150,000 jobs. While this is significant, much more growth could occur if the entire Fund was used for its intended purposes. For example, it is estimated that $280 million will be collected from AML receipts in FY 2005 (assuming no fee adjustment). If the federal government returned all $280 million to the local economies for abandoned mine land re-construction, almost 7,000 additional jobs could be created with an additional $174 million boost to coal region economies. In this manner, money would be going to work for the communities who are experiencing the consequences of pre-law mining practices as intended by SMCRA.

The ability of the states to accomplish the needed reclamation identified in current inventories is being constrained by the low level of funding for state AML programs. Since the mid-1980's, funding for state AML grants has been declining. In recent years, we have seen the President's budget propose significant reductions for state AML grants, which Congress has ultimately (and thankfully) restored. While we are well aware of the Administration's efforts to reduce the overall budget in order to meet other priorities related to Homeland Security and the War on Terrorism, holding onto AML money that is already statutorily dedicated to provide local improvements to health, safety, the environment, local economies and job opportunities seems to be counterproductive to "homeland security".

We were greatly heartened by the President's proposed budget for FY 2005, which has proposed an increase of $53 million for state AML grant funding above last year's approved level of $149 million. We were also encouraged by the Administration's recognition of the vital importance of reauthorizing fee collection authority to support the continuation of the Title IV program given the amount of work left to be done.

The future of the AML Fund and its potential impacts on the economy, public safety, the land, our Nation's waters and the environment will depend upon how we manage the Fund and how we adjust the current provisions of SMCRA concerning the Fund. As we draw closer to the September 30, 2004 expiration date, we are beginning to see more proposals for how the Fund should be handled and how SMCRA should be amended, if at all. The states and tribes, through IMCC, the National Association of Abandoned Mine Land Programs and the Western Governors Association have over the past several years advanced proposed amendments to SMCRA that are few in number and scope and that reflect a minimalist approach to adjusting the existing language in SMCRA and to incorporate only those changes necessary to accomplish several key objectives. They are as follows:

- To extend fee collection authority for at least 12 years.
- To significantly increase annual allocations to states and tribes to address AML problems. This has been one of the greatest inhibitions to progress under Title IV of SMCRA in recent years and must be addressed if we are to enhance the ability of the states and tribes to get more work done on the ground within the extended time frame of 12 years or longer.
- To confirm recent Congressional intent to eliminate the Rural Abandoned Mine Program (RAMP) under Title IV and to reallocate those moneys to the historic coal production share. While these moneys would be used primarily to address high priority coal related sites, the states and tribes may coordinate their efforts

with the Natural Resources Conservation Service and the local soil and water conservation districts in an attempt to address their concerns as well.
- To assure adequate funding for minimum program (under-funded) states who have consistently received less than their promised share of funding over the past several years, thereby undermining the effectiveness of their AML programs.
- To address a few other select provisions of Title IV that will enhance the overall effectiveness of the AML program, including remining incentives, state set-aside programs, handling of liens, and enhancing the ability of states to undertake water line projects.
- Finally, to address how the accumulated, unappropriated state and tribal share balances in the Fund will be handled (assuming that the interest in the Fund is no longer needed to address shortfalls in the UMW Combined Benefit Fund), while at the same time assuring that an adequate state share continues for the balance of the program to insure that all states and tribes are well-positioned and funded to address existing AML problems.

Mr. Chairman, it is obvious from an assessment of the current inventory of priority 1 and 2 sites that there will not be enough money in the AML Trust Fund to address all of these sites before fee collection is set to expire in September. It is even more obvious that, regardless of what the unappropriated balance in the Fund is (currently $1.5 billion) and what future fee collections will add to that balance over the next year, current Congressional appropriations for state and tribal AML program grants are woefully inadequate and are not keeping pace with our ability and desire to address the backlog of old as well as continually developing high priority AML problems. We are therefore faced with a significant challenge over the next few months—and that is to reconcile all of the various interests and concerns attending the administration of the AML program under Title IV of SMCRA in a way that assures the continuing integrity, credibility and effectiveness of this successful and meaningful program under SMCRA.

The states, through their associations, welcome the opportunity to work with your Committee, Mr. Chairman, and other affected parties to address the myriad issues that attend the future ability of the AML Fund to address the needs of coalfield citizens Our overriding concerns can be summarized as follows:

- Adequate, equitable, and stable funding must be provided to the states and tribes on an annual basis that will allow the states and tribes to address the AML problems their citizens are experiencing and to implement their respective AML programs to provide the services intended by SMCRA.
- The unexpended state share balance in the AML Trust Fund should be distributed to all the states and tribes as expeditiously as possible so states and tribes can address existing AML problems before inflationary impacts result in more costly reclamation and thus less reclamation.
- States and tribes under Title IV of SMCRA should remain the primary delivery mechanism for AML moneys based on their demonstrated history of effective and efficient program implementation. In this regard, the states and tribes have concerns about the proliferation of several recent programs throughout the federal government (Bureau of Land Management, National Park Service, Forest Service, Environmental Protection Agency, Bureau of Reclamation, U.S. Army Corps of Engineers, to name a few) that are aimed at addressing abandoned mine lands—at both coal and noncoal sites. While we support additional federal dollars from all sources that will assist with the clean up of abandoned mined lands, we want to guard against duplicative, competing programs that serve only to dilute the overall pool of funds available for service delivery through state and tribal programs. We have worked cooperatively with many of these federal agencies in the past on AML initiatives and we believe it is critical that we continue to achieve maximum cooperation and coordination, thus assuring efficient use of limited resources. The states and tribes have over 25 years of experience in this area and have demonstrated their expertise and efficiency in running these programs. We therefore advocate a continuing significant and meaningful state/tribal lead with regard to both SMCRA and other AML related programs.
- Funding for the “minimum program” states must be restored to the statutorily authorized amount of not less than $2 million annually.
- Any adjustment to the AML program should not inhibit or impair remining opportunities or incentives.
- Any adjustments to the existing system of priorities under Title IV must consider the impacts to existing state set-aide programs and to current state efforts to remediate acid mine drainage.

- Any adjustments to the current certification process should not inhibit the ability of the states and tribes to address high priority noncoal projects.
- Any review or adjustments to the current AML inventory should account for past discrepancies and provide for the inclusion of legitimate new sites.
- Any adjustments to Title IV of SMCRA must be presented and considered in a judicious and productive environment that allows for all affected parties' concerns to be heard and addressed, including coalfield residents who are directly affected by AML dangers and who have been adversely impacted by the unappropriated balance that delays further restoration of their communities. In this regard, it should be kept in mind that any legislative adjustments which have the result of significantly undermining state AML funding or the efficacy of state AML programs could lead state legislatures to seriously reconsider SMCRA primacy entirely—both Title IV and Title V. This very scenario was contemplated by the framers of SMCRA who structured the Act so that the Title IV AML program would serve as an incentive for states to adopt and implement Title V regulatory programs. Should the AML "carrot" be chopped up, the desire to maintain Title V primacy could be seriously re-thought by some state legislatures, particularly during difficult budget times, thus placing OSM in the undesirable position of having to run these programs at a significantly increased cost to the federal government. Hence the importance of assuring that the current state share provisions in SMCRA are held harmless in any proposed restructuring of the current allocation formula.

We appreciate the opportunity to present this testimony today, Mr. Chairman, and look forward to working with you in the future. I would be happy to answer any questions you may have or to provide follow up answers at a later time.

Senator THOMAS. Thank you, sir. I appreciate it.

Mr. Green from Wyoming. You, I think, Mr. Green, have another official with you. Would you care to introduce him?

STATEMENT OF EVAN J. GREEN, ADMINISTRATOR, ABANDONED MINE LAND DIVISION, WYOMING DEPARTMENT ENVIRONMENTAL QUALITY

Mr. GREEN. Yes, thank you, Mr. Chairman. I would like to introduce John Corra, who is director of the Wyoming Department of Environmental Quality and, more to the point, my boss.

[Laughter.]

Senator THOMAS. Thank you for being here. Go right ahead, sir.

Mr. GREEN. Thank you. Good morning, Mr. Chairman. My name is Evan Green and I am the administrator of the Abandoned Mine Land Division for the Wyoming Department of Environmental Quality. I am here today to testify on behalf of the State of Wyoming on the reauthorization of the abandoned mine land reclamation fee. I wish to thank the committee for this opportunity to present Wyoming's position.

Basically Wyoming supports the reauthorization concepts outlined in the bill offered by Senator Thomas and in the similar bill sponsored by Mrs. Cubin and Mr. Rahall in the House. This approach provides funding for the serious reclamation needs still facing the State of Wyoming and other States in the AML program and provides relief for Wyoming's mineral industry through fee reductions.

We request that this committee agree with Senator Thomas on the following items.

First, a prompt release of Wyoming's share of the AML trust fund.

Second, a fair share of future AML revenues to complete the reclamation of hazardous, abandoned mine sites in Wyoming. Like Pennsylvania, Ohio, West Virginia, and other States, Wyoming has

learned a great deal since 1977 about the ongoing problems created by historic coal mining. The remaining reclamation work in Wyoming exceeds our State share of the AML trust fund.

And third, we support the reduced fee structure that lowers the tax burden on Wyoming coal producers.

Wyoming strongly objects to the administration's reauthorization proposal as contained in the bill offered by Senator Specter on several counts.

First, Wyoming's coal producers would pay about $1.5 billion in reclamation fees over the reauthorization period, and no portion of those collections would be returned to Wyoming.

Second, Wyoming's trust fund now in excess of $400 million would be returned over a prolonged period with no interest added, further depreciating the real value of those funds.

And third, the administration's proposal is still dependent on the annual budget process and requires a substantial increase in yearly appropriations by Congress. There is no guarantee that Wyoming or other States will receive our trust fund balance in future years.

Wyoming recognizes the need to address priority 1 and priority 2 historic coalfield hazards, wherever they occur. We also recognize the commitment that this body has made to the Combined Benefits Fund and believe that that commitment should be honored as well. The Thomas bill and the Cubin-Rahall bill in the House address these needs while providing all States with a fair and equitable allocation of available funds.

I would like to spend a moment relaying Wyoming's track record in the AML program.

We have used our funds efficiently. We maintain a 95 percent obligation rate, and our administrative costs average less than 5 percent. Wyoming budgets 20 to 30 percent of available funds for priority 1 and priority 2 coal sites.

Wyoming has closed over 1,300 hazardous mine openings, reclaimed over 30,000 acres of disturbed land and abated or controlled 22 mine fires. 35 miles of hazardous high walls have been reduced to safer slopes and over $75 million has been spent to mitigate and prevent coal mine subsidence.

And we have work remaining. Our continuing inventory of historic mining districts has identified 1,700 additional coal sites and over 4,000 non-coal sites. These numbers compare to the 1,400 total sites now recorded for Wyoming in the AMLIS database.

Mining activities have impacted every one of Wyoming's 23 counties. Many communities continue to suffer the direct effects of mineral extraction and the boom and bust nature of the State's economy. All of the States and tribes in the AML program have continuing reclamation needs under the legitimate and original purposes of SMCRA. Wyoming believes that reauthorization should honor the Government's commitment to the States and tribes and that all entities with a stake in the outcome of this deliberation should be treated fairly by reauthorization legislation. I refer you to the written testimony submitted by Wyoming.

And thank you again for the opportunity to present this information for your consideration.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF EVAN J. GREEN, ADMINISTRATOR, ABANDONED MINE LAND DIVISION, WYOMING DEPARTMENT ENVIRONMENTAL QUALITY

Good Morning Mr. Chairman. My name is Evan Green. I am the Administrator of the Abandoned Mine Land Division of the Wyoming Department of Environmental Quality. I am here today to present testimony on behalf of the State of Wyoming on the reauthorization of Abandoned Mine Land Reclamation fee, and changes to the Surface Mining Control and Reclamation Act of 1977 proposed by Senator Thomas of Wyoming and by Senator Specter of Pennsylvania on behalf of the Administration. I wish to thank Chairman Domenici and the members of the Senate Energy and Natural Resources Committee for inviting the State of Wyoming to testify today.

SUMMARY OF WYOMING'S POSITION

I wish to begin by saying that Wyoming supports many of the AML fee reauthorization concepts contained in the Bill offered by Senator Thomas. This approach addresses both the serious reclamation needs facing our state and provides relief for our mining industry. To be specific, we request that this Committee agree with Senator Thomas on the following items:

- A prompt release of Wyoming's share from the AML Trust Fund.
- Providing a fair share of future AML revenues to complete the reclamation of abandoned mine sites in Wyoming. This requires that we continue to receive a fair share of fees paid by coal producers in our state. Like Pennsylvania, Ohio, and West Virginia, Wyoming has learned a lot since 1977 about the ongoing problems created by historic coal mining, and we have high hazard reclamation work remaining that exceeds our state share of the AML trust fund.
- A reduced fee structure that lowers the tax burden on Wyoming coal producers.

Wyoming strongly objects to the Administration's reauthorization proposal as contained in the Bill offered by Senator Specter on several counts:

- Wyoming's coal producers would pay $1.5 billion in reclamation fees. No portion of these collections would be returned to Wyoming.
- Wyoming's trust fund of $400 million would be returned over a prolonged period with no interest added, further depreciating the real value of the fund.
- The Administration's proposal is still dependent on the annual budget process and requires a substantial increase in yearly appropriations by Congress. There is no guarantee that Wyoming will receive our trust fund valance, and we are left out of any share of future collections.

Wyoming recognizes the need to address Priority 1 and Priority 2 hazards in historic coal fields. We also recognize the commitment this body has made to the Combined Benefits Fund and believe it should be honored. The Thomas Bill, and the Cubin/Rahall Bill in the House, addresses these needs while providing all states with a fair and equitable allocation of available funds.

HISTORY OF WYOMING COAL PRODUCTION

Since the middle of the 19th Century, Wyoming has been a major source of energy to fuel America's industrial revolution and to support subsequent development. The transcontinental railroad project in the 1860's created both the demand for coal to operate locomotives, and the transportation artery for coal delivery to areas of demand. Wyoming sites along the transcontinental route, now Carbon, Sweetwater, Lincoln and Uinta Counties, were mined extensively. As the network of rail lines expanded to serve more and more areas, so also expanded the market for Wyoming coal. Mines opened in Sheridan and Campbell counties to supply demands nationwide for cheap, clean coal. Coal has been mined on some scale in nearly every one of Wyoming's 23 counties, and Wyoming citizens continue to live with that legacy. As I will discuss below, continuing inventory efforts have shown a much more extensive amount of reclamation than is currently recognized by the OSM. Further, small towns no longer supported by these historic mines are saddled with deteriorating infrastructure that requires attention. These needs can be adequately met only through a fair and balanced reauthorization bill.

ACCOMPLISHMENTS OF THE WYOMING AML PROGRAM

Since implementation of the Surface Mining Control and Reclamation Act of 1977, Wyoming coal producers have paid almost $2 billion dollars in reclamation fees into the AML Trust Fund. In return, Wyoming has received about $520 million dollars, or about 29% of total collections. Wyoming consistently maintains an obligation rate

in excess of 95% of funds received, and spends less than 3% on administrative costs. Over the past five years, Wyoming has spent or budgeted 25% to 30% of each year's consolidated grant for the reclamation of Priority 1and Priority 2 Coal sites, as such sites are identified. The balance of available funds has gone to Priority 1 and Priority 2 non-coal sites, and to public infrastructure projects in communities impacted by past and present mining activities.

Since the inception of the AML program, Wyoming has closed 1,300 hazardous mine openings, reclaimed over 30,000 acres of disturbed land, and abated or controlled 22 mine fires. Thirty five miles of hazardous highwalls have been reduced to safer slopes, and over $75 million has been spent to mitigate and prevent coal mine subsidence in residential and commercial areas of several Wyoming communities. Wyoming has also partnered with the BLM, the Forest Service, and the National Park Service to eliminate mine related hazards on federal lands. In addition, Wyoming has invested $83 million in infrastructure projects such as public water systems, flood control projects, health clinics, schools, roads and other projects to abate public safety problems in communities impacted by mining.

Today, Wyoming is the largest producer of coal in the nation, with production expanding at a rate at about 6% a year. Unfortunately, Wyoming has not enjoyed economic diversification and remains largely dependent on mineral extraction primarily coal. While Wyoming has certainly benefited from our abundance of natural resources, the State has suffered, and continues to suffer, from the effects of an inequitable distribution of AML funds. Wyoming has been, and expects to continue to be, the single largest contributor to the AML reclamation fund. This contribution has enabled some states to receive more money than they have contributed to the program, while Wyoming has never received our fair share of the money we sent to Washington.

In essence, Wyoming has not only provided the bulk of funding for AML reclamation in other states, but has handled revenues returned to the state in an effective and efficient program to protect our citizens from mine related hazards, and to mitigate the impact of mining activities on Wyoming Communities.

HAZARDS REMAINING TO BE RECLAIMED IN WYOMING

The impacts associated with historic mining include 30,000 acres of land undermined by coal production in Sweetwater County alone. Sheridan County and Lincoln County each have over 5,000 acres undermined by historic coal mining. While a portion of these areas at risk are rural, some are in immediate proximity to cities, towns or recreation areas on public land. Each season, Wyoming AML identifies new subsidence features, failed shaft closures, mine openings, erosion into mine workings and other Priority 1 hazards. Incidentally, Wyoming sets the standard for mitigation of potential subsidence through our vast experience in Rock Springs, Hanna and Glenrock. Since the cost of mitigating subsidence-prone areas is extremely high, Wyoming AML mitigates large scale subsidence in only those areas that have been developed for residential or commercial use. Priority 1 hazards in rural areas are evaluated and addressed under either the AML state emergency program, or under the normal AML project priority system.

Wyoming AML is currently involved in a major statewide inventory process to identify both existing hazards and areas where deteriorating conditions (rotting support timbers, subsidence, failed closures, etc.) will create hazards in the future. Inventories conducted in the early days of the Wyoming AML program were based on aerial photography and USGS mapping, techniques that only scratched the surface of remaining work. Today's inventory effort includes a wealth of resources integrated for the first time into a comprehensive overview of potential AML projects. Inventory personnel reviewed historic mine maps from Bureau of Mines records, from company files, from museum records, and archives of the Wyoming Geologic Service. Files and records from the Department of Energy (uranium), from Federal Land Management Agencies, and from the US Geologic Survey were reviewed in detail for information on the location of mines and mining districts.

The results of this intensive research will be validated by site inspections in the field during the coming (2004) season. Obviously, construction costs to remediate these sites cannot be accurately established until site inspections are complete. However, preliminary results from the research portion of the inventory project indicate that there may be 1,739 additional coal sites and 4,050 non-coal sites, which will be verified by field inspections in 2004. These numbers compare to the 1,419 total sites now recorded for Wyoming on the AMLIS data base.

The cost for remaining work in Wyoming will greatly exceed the funds delivered under the Administration's proposal and will likely exceed hundreds of millions of dollars. Mine fires and ongoing subsidence work will add to that total.

WYOMING'S POSITION ON REAUTHORIZATION OF THE RECLAMATION FEE

Because Wyoming has been a responsible custodian of the funds entrusted to our AML program, your Committee can have confidence in taking the following actions:

1. Return of Trust Fund

Wyoming has never received the 50% return of collections promised in SMCRA. Wyoming wants a prompt return of the money now held in the AML Trust Fund from previous contributions by the State's coal producers.

Because annual AML appropriations to States and Tribes have lagged behind AML fee collections, the AML fund has a current balance of $1.4 billion. Every year that these funds are not returned to the states and tribes of origin, the real value of these funds declines because of inflation and the rising cost of reclamation construction. Wyoming's state share balance in this account is estimated to exceed $420 million by September 30, 2004. These funds, now idle in a federal account, should be put to productive use reclaiming hazardous mine sites and mitigating the deleterious effects of mining activities on Wyoming communities. This requires that the funds be returned without preconditions so the certified states are able to use the funds as they deem appropriate.

2. A Fair Share of Future Revenues

Wyoming wants a fair share of future fee collections returned to the State to address remaining hazardous coal and non coal mine sites.

Under the reauthorization proposals recently introduced into the House and Senate, Wyoming coal producers will pay $1 to $1.5 billion dollars into the AML Trust Fund in the next 10 to 15 years. The Administration's proposal would distribute those collections to Eastern States, and no money would be returned to Wyoming. While Wyoming recognizes that the problems in these Eastern States must be addressed, it is patently unfair for the State making the largest financial contribution to the AML program to be excluded from future distributions. Wyoming citizens remain at risk from the hazards of abandoned mines. Visitors to our vast public lands and magnificent recreation areas encounter unexpected dangerous conditions that could claim an innocent life. Wyoming communities are impacted by the boom and bust cycles of mineral extraction.

Future revenues are needed to respond to the remaining hazards identified through Wyoming's aggressive pursuit and identification of remaining coal and non-coal mining hazards. Much work remains to be done to protect our citizens and visitors to our state from such hazards. Money from future revenues is required to give our state the capacity to respond to on going conditions that will exist in perpetuity. Unfortunately, Wyoming's current ongoing inventory work is not yet reflected in the Abandoned Mine Land Information System (AMLIS) upon which the Administration has based much of its proposal for future funding. Wyoming, like Pennsylvania, West Virginia, Ohio, and other eastern states has learned a great deal since the early 1980's, when initial inventories were prepared and certification decisions made.

The Abandoned Mine Land Reclamation program in Wyoming has been an outstanding example of Federal State cooperation in the remediation of hazards to public health and safety resulting from past mining practices. We ask the opportunity to continue that relationship with sufficient funds to complete the work envisioned by the original drafters of SMCRA.

3. Reduction of Reclamation Fees

Wyoming wants the burden of reclamation fees on Wyoming coal producers reduced.

Coal production in Wyoming continues to increase at about 6% a year. This increase in production will off set a portion of the fee reduction and will generate funds for additional reclamation work nationwide. All coal producers as well as energy consumers would benefit from a reduction in reclamation fees. The Thomas bill and the Cubin Rahall bill divert currently un-appropriated RAMP funds (20% of current collections) and an additional 20% of fund revenues after state share allocations to historic coal allocations. Given these allocations, we can finish the job in all coal impacted states and still be fair to all states and Tribes participating in the AML Program.

4. Objections to Administration's Proposal

As discussed above, Wyoming has strong concerns with the Administration's proposal as contained in Senate Bill 2049 and House Resolution 3778.

Wyoming strongly objects to any proposal that would continue to tax Wyoming coal producers and return no part of those collections to the State. The Administra-

tion's proposal provides that some states are big winners in fund allocations, some states are held relatively harmless, while Wyoming is a big loser. We believe that the bill sponsored by Sen. Thomas is fair to all states and tribes with AML programs. Wyoming also notes that the Administration's proposal is still dependent on yearly budgets and Congressional appropriations. The reluctance of successive Administrations to recommend full funding of the AML program, and the reluctance of Congress to appropriate additional funding will not be resolved by the Administration's proposal.

CONCLUSION

All of the States and Tribes have continuing needs under the legitimate purposes of SMCRA. As Congress debates reauthorization of the AML fee, the discussion should begin with the premise that the Federal Government will honor its commitment to the States and the Tribes to return their share of the AML trust fund, and that all participating States and Tribes should be fairly treated by reauthorization legislation.

Wyoming respectfully requests that we continue to be consulted and included in future discussions. We are proud of our role in supporting the nation's economy, industry, and environment. We cannot forget that the ultimate resolution of this issue will affect the health and safety of our citizens, the quality of our environment, and the well being of our communities.

In conclusion, Wyoming wishes to thank the Senate Energy Committee for the opportunity to be heard on these important issues.

Senator THOMAS. Thank you, Mr. Green.

Mr. Shirley.

STATEMENT OF JOE SHIRLEY, JR., PRESIDENT OF THE NAVAJO NATION

Mr. SHIRLEY. Good morning, Senator Thomas, Senator Bingaman, committee members. I want to express my appreciation on behalf of my people for the invitation to be here to give testimony. I am very honored to present this testimony today on behalf of my Navajo Nation.

The issue before us, the reauthorization of SMCRA, the Surface Mining Control and Reclamation Act of 1977, is of the utmost importance to Navajo people. We appreciate the opportunity to express our position to the Senate Energy and Natural Resources Committee this morning.

The Navajo Nation has four objectives concerning SMCRA reauthorization. Our four objectives are: number one, increase or continue our annual allocation of reclamation fees under section 402(g)(1)(B). Objective number two, promptly release our unappropriated trust fund balance. Objective number three, extend the expiration date to September 30, 2018, and objective number four, allow tribes to apply for primacy through an amendment to section 710. Now, let me elaborate a little bit on each objective.

Objective number one. We respectfully request that you increase or continue the allocation of the reclamation fees collected annually to the tribes under section 402(g)(1)(B). The Navajo Nation strongly opposes any amendment to section 402(g)(1)(B) that will deny us our allocation and divert it to States that have not yet completed reclamation activities. The Navajo Nation's share of the reclamation fees is approximately $87 million, of which the Navajo abandoned mine land program has expended about $57 million on reclamation efforts.

The Navajo Nation has been certified under section 411 of SMCRA. Because we are certified, we use our annual allocation under section 402(g)(1)(B) to fund public facilities projects. These

projects have built infrastructure, such as roads, waste management systems, and water services. These projects may not be critical to the States because they already have infrastructure in place, but on Navajo where 70 percent of my people lack domestic and municipal water for everyday use, where 78 percent of the roads are still dirt-based, and where 60 percent of the people do not have communication services, these public facility projects are critical.

We have complied with the requirements of SMCRA and we have properly utilized our share of the reclamation fees in accordance with the priorities of SMCRA. We desperately need our allocation of the reclamation fees available under section 402(g)(1)(B) and we urge the committee to raise the tribal share of the reclamation fees so we may confront our infrastructure problems. At the very least, we recommend that tribes continue to receive the allocation currently authorized by SMCRA.

Under objective number two, we request that our unappropriated balance of approximately $30 million be promptly released. We seek the expeditious return of our trust fund balance while remaining an active participant in SMCRA.

Under objective number three, we request that the reclamation fee expiration date be extended to September 30, 2018. We believe that this will allow the Office of Surface Mining enough time to clean up priority sites and meet the goals of SMCRA.

And under our final objective, lastly we request that tribes participating in SMCRA be treated on equal footing with the States and become eligible to apply for tribal primacy under title V of SMCRA. Mr. Chairman, we believe that it was the original intent of the authors of SMCRA to treat Indian tribes on equal footing with the States in regards to tribal primacy. I reference the conference report that is quoted in my written testimony and the time line over the last 27 years that has brought us to this point.

Since 1977, 24 coal mining States have obtained primacy from the Office of Surface Mining for the authority to regulate, inspect, and enforce surface coal mining within those States. I submit to you today that the Navajo Nation is ready to assume primacy over the regulation and enforcement of coal mining on our land. We are requesting that Congress allow tribes the opportunity to apply for tribal primacy and become eligible to receive 100 percent of the costs associated with the approved program.

The Navajo Nation can respond and oversee the operations of Navajo mines quickly and responsibly and we believe that we can do it at a lower cost to the Federal Government. We urge the committee to adopt our proposed amendment to section 710 of SMCRA.

In 1987, the Office of Surface Mining stated that the Navajo Nation was the most qualified tribal entity to assume primacy for control of surface coal mine reclamation. Without the approval of Congress, Native American nations will never be able to apply for primacy and regulate surface coal mining and reclamation operations on their lands. We respectfully request that this committee approve our proposed amendment.

In closing, I want to thank the committee for allowing me to testify on behalf of my Navajo people. I request that the committee continue to keep Native Americans in mind when considering the reauthorization of SMCRA.

My people benefit from SMCRA. The Navajo Nation is roughly the size of West Virginia and West Virginia has over 18,000 miles of paved roads compared to the Navajo Nation's 2,000 miles of paved roads. Through our share of the allocation we receive from SMCRA, we are developing infrastructure that will help alleviate these needs.

We have been a faithful participant in SMCRA and look forward to reaching a workable solution concerning the SMCRA reauthorization. Thank you.

[The prepared statement of Mr. Shirley follows:]

PREPARED STATEMENT OF JOE SHIRLEY, JR., PRESIDENT OF THE NAVAJO NATION

Chairman Domenici, Senator Bingaman, and members of the Committee. I am honored to present testimony today on behalf of the Navajo Nation. The issue before us, the Reauthorization of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), is of the utmost importance to the Navajo people, and we appreciate the opportunity to express our position to the Senate Energy and Natural Resources Committee. The Navajo Nation requests that the following written testimony be submitted into the record.

OBJECTIVES

(1) Increase and/or continue the allocation of the reclamation fees collected annually to the Tribes under Section 402(g)(1)(B);
(2) Promptly release the unappropriated balance of State and Tribal share allocations;
(3) Extend the reclamation fee expiration date to September 18, 2018;
(4) Allow Native Nations participating in SMCRA the opportunity to apply for Tribal primacy under Title V of SMCRA, subject to applicable SMCRA regulations.

(1) Increase and/or continue the allocation of the reclamation fees collected annually to the Tribes under Section 402(g)(1)(B).

Many Navajo people live in conditions that the everyday American cannot comprehend; our needs are not unique to Native Nations across America, but it is important to list these statistics so the committee has a better understanding of why funding under Section 402(g)(1)(B) is so important to the Navajo Nation.

(1) 56% of the Navajo population live below the poverty level, and the unemployment rate hovers around 50%;
(2) 70% of the Navajo people lack domestic and municipal water for everyday use;
(3) 78% of the public roads are dirt based, with little or no gravel;
(4) 60% of the Navajo Nation lacks basic communication services;
(5) 60% of the Navajo Nation lacks electrical power lines.

I did not come here today to decry the substandard quality of life that exists on the Navajo Nation; however, I would like the members of this committee to know that through SMCRA the Navajo Nation has a vehicle to address these needs, and we have implemented projects in accordance with the priorities of SMCRA.

The Navajo Nation has contributed an estimated $170M into the Reclamation Fee Collection Trust pursuant to SMCRA. The Navajo Nation's share of the Reclamation Fee is approximately $87M, of which the Navajo Abandoned Mine Land Program has expended about $57M on AML reclamation efforts. SMCRA was amended in 1990 to include reclamation of abandoned mines such as uranium, silver, and limestone, which constitute a hazard to the public health and safety. Arguably, the most important section for Navajo has been the certification process under § 411. This section was added to facilitate land and water projects, and public facility projects impacted by mining activities. In order to qualify under § 411, the State or Tribe must be certified with completion of coal mine reclamation by the Secretary of Interior. The Navajo Nation applied and received its certification for completion in 1994. The Navajo Nation AML program has reclaimed over 1300 mine sites, and since many of the problem sites have been addressed, the Navajo Nation amended the Navajo Reclamation Plan in accordance with § 411 of SMCRA to implement PFP's (Public Facility Projects). Those chapters/communities that are impacted by present and past mining activities are eligible for PFP funding through a competitive proposal process. To date, the Navajo Nation, through the Navajo Nation Council Resources Committee, selected and approved 31 PFP's through partnership and lever-

age funding. These PFP's are funded by the 50% of reclamation fees collected annually on the Navajo Nation pursuant to § 402(g)(1)(b) of SMCRA. The PFP's develop infrastructure such as roads, waste management systems, and water services. The Navajo Nation has complied with the requirements of SMCRA and we have properly utilized our share of reclamation fees in accordance with the priorities set forth in SMCRA. The Navajo Nation strongly opposes any amendment to § 402(g)(1)(b) that will deny us our reclamation allocation and divert it to states who have not yet completed reclamation activities. We believe it fundamentally unfair to punish a certified tribe (like the Navajo Nation) by taking the annual reclamation fees we contribute to the AML fund and redirecting it to States that are not certified. This would effectively penalize the Navajo Nation for taking the responsibility to reclaim the most hazardous and harmful externalities associated with mining on its land. There is not a state in the union that faces the vast array of infrastructure problems confronting the Navajo people; we desperately need our allocation of the reclamation fees available under § 402(g)(1)(b) and we urge the committee to raise the tribal share of the reclamation fees so we may confront our infrastructure problems. At the very least, we recommend that tribes continue to receive the 50% allocation currently authorized under SMCRA. It is vital that Native Nations continue to receive their share of allocations at a rate of 50% or greater. We recognize the need to address problem areas in the Eastern States; however, we believe that these priorities can be met without punishing tribes and other states. The Thomas bill, S. 2086 , strives to strike such a balance. The Administration bill, S. 2049, sponsored by Senator Specter, completely eliminates the State/Tribal share allocation and we cannot support such a proposal.

(2) Promptly release the unappropriated balance of Tribal and State Share allocations

Since the inception of the program, the Navajo Nation's share of the reclamation fee is $87M. We have expended approximately $57M on AML reclamation efforts. The Navajo Nation balance of approximately $30M sits idle in the Federal Treasury and has not been allocated to us. We request the prompt return of our trust fund balance. S. 2086 and S. 2049 address the return of our trust fund balance in different ways. S. 2086 would return our balance to us by the end of 2004 through a provision authorizing payments to certified States and tribes that do not have lands available under the Mineral Leasing Act. S. 2049 authorizes a payout of the balance over ten years; however, the Navajo Nation cannot support this alternative if it will eliminate our allocation of the annual reclamation fees available under § 402(g)(1)(b). The Navajo Nation desperately needs our trust fund balance to address many of the infrastructure problems mentioned above and we request that our balance be returned to us in an expeditious manner so we can address these concerns.

(3) Extend the Reclamation Fee expiration date to September 30, 2018

We are here today because the expiration date is due to expire September 30, 2004. We respectfully urge the committee to extend the expiration date to September 30, 2018. We believe this will allow OSM enough time to meet their goal of cleaning up priority sites and allow States and Tribes to achieve the goals that SMCRA was intended to accomplish.

(4) The Navajo Nation requests that tribes participating in SMCRA be treated on equal footing with the states and become eligible to apply for Tribal Primacy under Title V of SMCRA, subject to applicable SMCRA regulations

This committee is well aware of the struggles facing Native Nations in their push towards self-determination. Regretfully, the word has lost its meaning when it applies to the relationship between Native Nations and the Federal Government. Mr. Chairman, we believe that it was the original intent of the authors of SMCRA to treat Indian Tribes on equal footing with the states in regards to tribal primacy. For example, I reference Conference Report No. 95-337 from July 20, 1977, a conference that you were a participant in Mr. Chairman. On page 114 of the report the comments for Section 710 read as follows:

> The House bill was adopted by the Conferees. It was identical to the language reported by the Senate Energy and Natural Resources Committee. However, the Senate had replaced this section with a new Title VIII which would have treated Indian tribes in much the same way as States are treated under the Act, in particular by allowing tribal authorities to submit regulatory programs for approval by the Secretary. The Conferees rejected this Senate approach, agreeing instead to the House bill in requiring that a

> study be carried out by the Secretary and that operations on Indian lands comply with the performance standards of the act.

Instead, Section 710 of SMCRA directed the Secretary of the Interior (Secretary) to consult with Indian tribes, and submit a report to Congress on the question of regulation of surface mining on Indian lands. The purpose was to propose legislation authorizing Indian tribes to elect to assume regulatory duties over the administration and enforcement of surface mining of coal on Indian lands. Today, almost 27 years have passed since SMCRA became law and the Department of Interior (DOI) has failed to propose legislation allowing Native Nations to assume primacy for regulation of surface coal mining activities on their lands. The failure to propose such legislation is not due to a lack of cooperation between the Navajo Nation and DOI. See the following timeline:

- 1982: OSM entered into a Cooperative Agreement with the Navajo Nation, Crow, and Hopi Tribes, funding them to conduct several activities, including developing tribal regulations on surface mining that are necessary prerequisites for assuming tribal primacy;
- 1984: DOI provided a report to Congress which recommended Tribes be allowed to obtain approval of either partial or full regulatory programs;
- 1984: Congress passed Public Law 100-71 on Tribal Primacy authorizing the AML programs for the Navajo Nation, Hopi, and Crow tribes without first obtaining regulatory programs;
- 1986: The Government Accounting Office recommended to the House Committee on Interior and Insular Affairs that regulatory capabilities of tribes to assume primacy should be assessed;
- 1987: OSM responds to the Committee with a report assessing the readiness of the three tribes to assume primacy. OSM stated that the Navajo Nation was the most qualified tribal entity to assume primacy for control of the surface coal mine reclamation.
- 1989: Funding for the Title V program under the Cooperative Agreement with OSM ceased in 1989, because DOI abandoned the pursuance of tribal primacy legislation;
- 1992: Congress passed the Energy Policy Act, which amended Section 710 of SMCRA and provided for annual coal grants to four coal owning tribes.

House Report No. 102-474 (viii) p. 2313, reveals the intent behind Title XXV, § 2514 of the Energy Policy Act of 1992, which amended § 710 of SMCRA:

> This section provides that the Navajo, Hopi, Northern Cheyenne, and Crow tribes will be eligible for funding to operate tribal offices of surface coal mining regulation. Each of these tribes have significant coal resources located on their reservations. Funding for these offices will allow for the development of tribal regulations and provide tribal employment and training in the area of mining and mineral resource regulation. The Committee intends these offices to work cooperatively with the Office of Surface Mining Reclamation and Enforcement of the Department of Interior in all matters relating to surface mining activities on Indian lands. The Committee intends this section to provide each of the tribes with the ability to be more involved and gain expertise in the regulatory activities regarding surface mining operations on Indian lands. This section is not intended to alter, expand, or diminish the current regulatory jurisdiction of these tribes over all lands within the exterior boundaries of their reservations.

- 1996: After four years, DOI finally provided limited funding to the coal owning tribes in accordance with the Congressional amendment to § 710.

The Navajo Nation has fully cooperated with OSM and we believe we have the necessary expertise to assume full primacy over all regulatory and inspection aspects of surface mining on the Navajo Nation. However, OSM has failed to introduce or advocate on behalf of Tribal primacy legislation. For 20 years now, Congress has been in receipt of the Secretary's recommendations regarding tribal primacy. OSM is not authorized to accept applications for primacy until authorized by Congress. Since 1977, twenty-four coal mining states have obtained primacy from OSM for the authority to regulate, inspect, and enforce surface coal mining within those states. The Navajo Nation is ready to assume primacy over the regulation and enforcement of coal mining on our land. We realize that there are details and jurisdictional issues that must be addressed by the tribes and OSM when tribes apply for primacy. However, we are simply requesting that Congress allow tribes the opportunity to apply for tribal primacy and become eligible to receive 100% of the cost associated with the approved program. We believe that we can regulate and inspect

our mines in a quick and efficient manner. OSM cannot respond to inspection requests and managerial duties in an expeditious manner because the three nearest offices are in Denver, Colorado, Farmington, New Mexico, and Albuquerque, New Mexico. The Navajo Nation can respond and oversee the operations of Navajo mines quickly and responsibly, with less cost to the Federal government. Therefore, we urge this Committee to adopt the following proposed amendment to §710 of SMCRA:

SECTION 710 (J)

> Notwithstanding any other provision of this section, Indian tribes may be considered as states under Sections 503 and 504, and apply for and receive primacy under the provision of 504(e). Grants for developing, administering , and enforcing tribal programs shall be provided in accordance with the provisions of Section 705, except that tribes shall be eligible for 100% of the cost of developing, administering, and enforcing the approved program.

Without the approval of Congress, Native Nations will never be able to apply for primacy and regulate surface coal mining and reclamation operations on their lands. We respectfully request that this committee approve our proposed amendment.

CONCLUSION

The Navajo Nation fully supports the reauthorization of SMCRA. The infrastructure on Navajo land is in desperate need of improvement and SMCRA helps facilitate our infrastructure needs through use of Public Facility Projects under §411. This is apparent by the recent funding of 31 Public Facility Projects through partnership and leverage funding. The Navajo Nation does not have the infrastructure capabilities that the states have. West Virginia (a state roughly the same size as the Navajo Nation) has 18,000 miles of paved road. In comparison, the Navajo Nation has 2,000 miles of paved roads. We have been a faithful and active participant in SMCRA, and we ask that you increase and/or continue our Tribal share allocation under §402(g)(b)(1), promptly release our unallocated trust fund balance of $30M, and extend the expiration date to September 30, 2018. In closing, we urge the Committee to adhere to the principles of self-determination and allow the Navajo Nation and other Native Nations the opportunity to apply for primacy under Section (s) 503 and 504 of SMCRA. We have been working towards assuming primacy for almost 30 years, allow us to take the final step. I thank the Committee, on behalf of my people, for the opportunity to testify today and we look forward to reaching a workable solution concerning the SMCRA reauthorization.

Senator THOMAS. Thank you.

Mr. Gauvin.

STATEMENT OF CHARLES F. GAUVIN, PRESIDENT AND CEO OF TROUT UNLIMITED

Mr. GAUVIN. Thank you, Mr. Chairman, committee members. We really appreciate the opportunity to present our views on S. 2086 and S. 2049.

I want to present a few highlights from our written testimony. I want to emphasize that unlike the other gentlemen up on this panel, I and my organization are not experts in SMCRA or AML generally and certainly not the allocation issues that are confronting you in this hearing and in your deliberations. What we are experts in is in watershed restoration which has become an important use of SMCRA funds, AML funds in particular.

AML reauthorization, as we all know, gives us a very important opportunity to fulfill a promise we made a generation ago to the people living in and around coal country in the United States. It also gives us an opportunity once again to renew a source of funds for remedying public safety threats and the immense amount of ecological damage across a broad swath of America's landscape that has been visited upon it by surface mining and coal mining.

We have a great opportunity before us, as Secretary Norton noted, to finish the job of dealing with acid mine drainage, which the Office of Surface Mining now has characterized as the single largest source of pollution in Appalachia.

Now, as to our views with respect to the legislation, a few core principles. First, we believe that that the health and safety of the 3.5 million people living in and around coal country must continue to be the first priority of the AML program.

Secondly, we believe ecological restoration continues to have a very important place in the AML program and should not be legislated away as a funding priority. We support, therefore, retaining the law's existing system of priorities which we believe gives the States the flexibility they need to get the job done.

I want to note that as you go across Appalachia, in many places ecological restoration that is being conducted with AML funds is meeting very important health and safety needs as well as creating a degree of economic well-being which would not exist otherwise. We can protect current and future drinking water sources and reduce human exposure to toxic metals by going to the headwater sources of acid mine drainage and treating them with AML and CSI funds.

For many rural communities in West Virginia and Pennsylvania and places like that and Kentucky as well, watershed restoration using AML funding is key to economic growth. These are communities often that are isolated, that are not in the mainstream economically anymore, have not been for generations, and really need a shot in the arm. Recreationally based ecotourism and such is really an important opportunity for them, and that can be facilitated by the use of AML funds.

We have made great strides in the past 10 years, in particular in watershed restoration using AML funds. We are developing practical solutions and technology transfer that really will help communities in these beleaguered parts of the country to develop very sustainable, on-the-ground solutions and really attend to their watersheds using AML funds.

I want to also note that in addition to having tremendous community support in coal country, States are rising to the challenge. Pennsylvania now has a new $800 million "growing greener" bond issue with which its taxpayers will fund $100 million worth of watershed restoration in areas that are plagued by AMD.

It is very important to note that for us to use this money effectively and much more effectively than has been done in the past, we need to build better human infrastructure and better partnerships to put the money on the ground. I cannot tell you how many of our 400 chapters around the country that have tried to put these projects together and have found the technical aspects of getting AML funding somewhat daunting, and in some cases as an obstacle to really doing the projects necessary to get the work done. But we are moving head. We are getting the work done.

Kettle Creek in Pennsylvania is an outstanding example. We have photographs up. This is one of the problems we are treating in the headwaters of Kettle Creek. This is what is known as the kill zone on the Hewling Branch, a tributary of Kettle Creek. This is an ecological zone of death from acid mine drainage. This prob-

lem is being dealt with through a passive treatment technology through this use of this pond and crushed limestone. Projects like this are no longer on the fringe of scientific understanding. They are technologies that can be facilitated and transferred around the country, and as we spread the word and the capability, more and more AML monies will be needed.

Briefly I want to mention that we are also doing this in Kentucky, Senator Bunning's home State, on Rock Creek in the Daniel Boone National Forest; Senator Lamar Alexander's home State of Tennessee on Coal Creek. These projects need to be facilitated. They need to have a steady source of funding.

So for all of those reasons, we urge you to retain the general welfare priority of SMCRA, fulfill SMCRA's promise by making AML funding off budget and increase the CSI because we foresee a growing need. In fact, there is a pent-up need for that funding.

Extend the authorization, if you can, to 25 years and not the shorter times in the two bills.

And then finally, consider authorizing a similar fund for cleaning up abandoned hardrock mine States in the West. We have a tremendous pilot project going on in Utah on the American Fork River where we are working with Kennecott and Tiffany and Company to do a lot of this type of work in the West.

So I will wind up my testimony by thanking all of you for the opportunity to appear and we stand ready to help you and work with you in delivering on the promise we made a generation ago to coal country.

[The prepared statement of Mr. Gauvin follows:]

PREPARED STATEMENT OF CHARLES F. GAUVIN, PRESIDENT AND CEO OF TROUT UNLIMITED

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear today to give you the views of Trout Unlimited (TU) on two bills before the Committee, S. 2086 and S. 2049, both of which are designed to reauthorize and amend the Abandoned Mine Reclamation Fund (AML Fund) created by the Surface Mining Control and Reclamation Act (SMCRA). TU commends the Committee for holding the hearing and moving forward on reauthorizing this important program, which is set to expire at the end of Fiscal Year 2004.

TU is the nation's largest coldwater fisheries conservation group dedicated to the protection and restoration of our nation's trout and salmon resources, and the watersheds that sustain those resources. TU has over 130,000 members in 450 chapters in 38 states. Our members generally are trout and salmon anglers who give back to the resources they love by voluntarily contributing substantial amounts of their personal time and resources to fisheries habitat protection and restoration efforts. The average TU chapter donates 1,000 hours of volunteer time on an annual basis.

We are not experts in the intricacies of the AML Fund, however, we are experts in watershed restoration. In the past seven years, TU has worked with a wide variety of Federal, state, and local partners to restore watersheds degraded by abandoned mines and other past management practices. These efforts have taken place in many states including New York, Pennsylvania, Idaho, Montana, New Mexico and Vermont. Given our experience, one point is crystal clear reauthorization of, and increased funding for, the AML fund will provide additional money and resources for watershed restoration.

Passed in 1977, SMCRA gives the Office of Surface Mining (OSM) authority to regulate coal mining and to collect fees from coal companies to create the AML Fund. The funds are used by the states and OSM to reclaim coal mining sites that were deserted before the law was enacted in 1977. The law protects our Nation's resources by improving the health of its watersheds and landscapes that are affected by current and past mining practices. Completed reclamation projects con-

ducted under the law have improved the quality of tens of thousands of lives, restored water quality, and improved fishing and hunting.

Reauthorization of the AML Fund is about fulfilling a promise made to protect Americans living in the coal fields from serious safety and environmental hazards. Secretary Norton said it well recently when she said that reauthorizing the AML Fund is about "finishing the job." After implementing the program for 26 years, an estimated 7,000 mine sites remain unreclaimed. According to OSM, about 3.5 million people live less than one mile from abandoned coal mines. Unreclaimed high walls, burning slag piles, and gaping holes in the ground are some of the pressing hazards that have been, and should remain, the highest priorities of the program.

In addressing reclamation of abandoned coal mines, ecological restoration should not be pitted against public health. They are largely overlapping. Both improve the quality of life and both improve the health of public watersheds. TU and its members know about water and watersheds, and we are here today because too many of the nation's streams run orange because of pollution from abandoned coal mines. The states and the OSM estimate that thousands of miles of Appalachian mountain streams are damaged by acid mine drainage from abandoned coal mines. It is one of the nation's largest remaining water quality problems.

The good news is that, although the problem is vast, practical solutions exist to fix it. TU, OSM and states are working together throughout the eastern mountain region to address acid mine drainage problems. The job is far from finished. We urge the Committee and the sponsors of the bills to move expeditiously to enact the reauthorization, and to use the reauthorization legislation to increase funding for restoration of watersheds damaged by pollution from abandoned coal mines.

Acid drainage flowing from abandoned coal mines has left some streams devoid of any life. EPA has singled out drainage from abandoned coal mines as the number one water quality problem in the Appalachian mountain region of the eastern U.S. Much of the problem originated years ago from coal production that helped build America and fueled our war efforts during World War I and II.

Acid drainage is water containing acidity, iron, manganese, aluminum, and other metals. It is caused by exposing coal and bedrock high in pyrite (iron-sulfide) to oxygen and moisture as a result of surface or underground mining operations. If produced in sufficient quantity, iron hydroxide and sulfuric acid, a result of chemical and biological reaction, may contaminate surface and ground water.

According to EPA, OSM and state water quality agencies, thousands of miles of streams are badly polluted with acid drainage. Acid drainage problems exist in Pennsylvania, West Virginia, Ohio, Kentucky, Maryland, Indiana, Illinois, Oklahoma, Iowa, Missouri, Kansas, Tennessee, Virginia, Alabama, and Georgia. The worst, most extensive pollution is from decades-old abandoned coal mines in Pennsylvania and West Virginia.

In an effort to demonstrate how practical solutions could be applied to an otherwise daunting task, TU, OSM, the commonwealth of Pennsylvania, and private funders have spent more than $2 million to date cleaning up acid mine drainage pollution in the lower part of the Kettle Creek watershed in north-central Pennsylvania. I'll discuss our progress momentarily, but this is just one part of one very important watershed in the state. We estimate the need for, and are seeking, an additional $8 million to finish the acid mine drainage cleanup job on Kettle Creek.

Just downstream, TU and others are now looking at the larger watershed into which Kettle Creek flows, the West Branch of the Susquehanna River, possibly the most polluted large river in America. Approximately 150 miles of the mainstem and more than 500 miles of coldwater tributaries have been rendered essentially lifeless due to toxic concentrations of metals and acidity from acid mine drainage, much of which is from abandoned mines. Overall, 72 percent of the 6,992 square-mile West Branch basin is affected by acid mine drainage—the source for 96 percent of the pollution in the West Branch watershed.

The scope of the problem in the West Branch is daunting: removing the high concentrations of toxic metals and neutralizing the pH of the acid mine drainage polluted water could cost hundreds of millions of dollars. At the same time, successful restoration of the West Branch will yield enormous economic and human health benefits that in turn will translate into a better way of life for the local communities. In addition, the potential for fishery restoration is phenomenal. Each stream in the watershed has been assessed as a potential high quality coldwater fishery or exceptional value stream. The headwaters of most streams above the acid mine drainage impaired areas are classified by the state as Class A wild trout fisheries. In short, on the West Branch, as in many other places, the technology to fix the problem is available. States, communities and conservation groups have the will. All we need is more funding.

The AML Fund currently provides some limited but extremely useful funds for cleaning up the polluted water. More funding is needed.

TU is familiar with two sources that receive moneys from the AML Fund for cleaning up abandoned mine pollution:

- OSM's Clean Streams Initiative, funded at $10 million in FY 2004 from the Federal share of the AML Fund, and
- Decisions made by individual states to allocate some of the funding they receive from the AML Fund to finance cleanup programs.

Started in 1994 with only four million dollars, the purpose of the Clean Streams Initiative is to facilitate and coordinate citizen groups, university researchers, the coal industry, corporations, the conservation organizations, and local, state, and federal government agencies that are involved in cleaning up streams polluted by acid drainage.

The science and the effectiveness of the cleanups provided by this funding are improving every year. Methods of water treatment used to eliminate acid drainage from abandoned underground mines can be grouped into two types. The most common method is chemical treatment. Called active treatment because it requires constant maintenance, this method usually involves neutralizing acid-polluted water with hydrated lime or crushed limestone. This treatment reduces acidity and significantly decreases iron and other metals. However, it is expensive to construct and operate and is considered a temporary measure because the acid drainage problem has not been permanently eliminated.

The second treatment method is called biological, or passive control. This technology involves the construction of a treatment system that is permanent and requires little or no maintenance. Passive control measures involve the use of anoxic drains, limestone rock channels, alkaline recharge of ground water, and diversion of drainage through man-made wetlands or other settling structures. Passive treatment systems are relatively inexpensive to construct and have been very successful on small discharges of acid drainage, such as those on the Kettle Creek watershed.

TU has worked with state agencies and OSM on cleanup projects in five eastern states, Pennsylvania, Maryland, West Virginia, Kentucky and Tennessee. Highlights include the following:

KETTLE CREEK, PENNSYLVANIA

The AML Fund has provided several hundred thousand dollars to restore Kettle Creek. TU and its partners have made significant progress during the past five years in efforts to abate acid mine drainage in the lower Kettle Creek watershed. Our Lower Kettle Creek Restoration Plan provides the overall blueprint that guides the assessment and remediation activities, and this plan is being supplemented with data from airborne remote sensing surveys conducted by the U.S. Department of Energy National Energy Technology Laboratory. These surveys utilized thermal infrared and helicopter-mounted electromagnetic technologies to identify the acid mine drainage problems and to target key areas for remediation work.

Two on-the-ground projects have already been completed as a direct result of the Lower Kettle Creek Restoration Plan and several more are currently under way. The ultimate goal of our project work is to reclaim17 miles of Kettle trout stream. The completed projects will restore native brook trout populations, create a new recreational fishery, expand the local economy that depends on outdoor recreation and tourism, improve water quality in local communities, and contribute to the overall restoration of the West Branch Susquehanna as it flows downstream to the Chesapeake Bay.

ROCK CREEK, KENTUCKY

In Kentucky, TU is working with OSM, state water and fisheries agencies, and the U.S. Forest Service to restore Rock Creek in the Daniel Boone National Forest. Although parts of the creek are healthy and provide fine trout fishing, some stretches are badly damaged by acid mine drainage from abandoned coal mines. TU and its partner agencies are removing coal mine refuse from the banks of one stretch of the creek, and are implementing passive liming and treatment of other acid-impaired stretches, in a large-scale effort to restore this key tributary of the Cumberland River.

COAL CREEK, TENNESSEE

In east Tennessee, TU's Clinch River chapter is working hand-in-glove with the community of Briceville to clean up acid mine drainage in Coal Creek, a tributary of the Clinch River. After addressing chronic flooding and stream bank erosion prob-

lems that plagued the community for decades, the chapter is turning its attention toward the creation of four new wetlands near abandoned mine sites. The wetlands will filter out the majority of pollutants, including acid and heavy metals, such as iron, which currently pollute Coal Creek. But in order to initiate construction, our local volunteers are depending upon funding from the Clean Streams Initiative not only to purchase the necessary materials, but also to imbue the owners of abandoned mines with the trust that our ample will to do good work is matched by the means to carry it out.

The "general welfare" priority currently in SMCRA allows watershed clean up to occur and it must be retained, as S. 2049 does, but S. 2086 does not.

Section 4 of S. 2086 would eliminate the general welfare provision of both Priority 1 and Priority 2. As I have stated, TU has no intention of advocating any changes in the public health and safety priorities of the existing Reclamation Fund law. However, the large need for cleaning up water pollution caused by abandoned coal mines, and the great benefits to communities and states derived there from, leads TU to be a strong advocate of retaining the priorities in current law. We urge the Committee to do so. General welfare projects in Priority 1 and Priority 2 should continue to be funded.

Fulfill the promise of SMCRA by making the AML Fund off-budget and increasing funding for the Clean Streams Initiative: the sooner the reclamation work is funded, the sooner it is finished.

If we all agree that our goal is to "finish the job," then let's get on with it. Currently, more than $6 billion is needed to fix high priority public health hazards associated with abandoned coal mines. To clean up water and watersheds, a total of $15 billion is needed. Despite this need, more than $1.5 billion that has been collected remains unspent. Clearly, a reauthorized AML Fund must keep the funding tap open. Therefore, TU encourages the Committee to make the AML Fund off-budget and not subject to the annual appropriations process.

The fee reduction in both bills is inappropriate given the overarching objective of putting money on the ground to complete projects. Both bills phase in substantial reductions in fees collected from coal mining companies over the life of the new authorization. In light of existing funding needs, we see no reason why the fee reduction is appropriate. We urge the Committee to retain the current fee structure. TU believes the current fee structure will be more palatable to companies if they are assured that all of the fees are expended on the purposes set forth in SMCRA as would be achieved by making the fund off-budget.

Finally, we urge the Committee to dedicate $25 million annually from the off-budget Reclamation Fund to the Clean Streams Initiative. We urge the Committee to support increasing the Clean Streams Initiative funding from its current level of $10 million up to $25 million over the course of the 15 year authorization.

Consider authorizing a similar reclamation fund for cleaning up abandoned hardrock mine pollution in the western U.S.

Although a few western states, such as Wyoming, use some of their AML Fund allocations for non-coal mine abandoned hardrock sites, the need for restoration of these sites far outstrips the available resources. In the West, it is not a matter of finishing the job of cleaning up abandoned hardrock mining sites, it is imperative to get started. Indeed, according to EPA, abandoned mines affect the health of 40% of western headwater streams. This pollution threatens coldwater fisheries, contaminates drinking water for millions living downstream, and jeopardizes local economies. We urge the Committee to take a serious look at the problem and to start developing a legislative solution to establish a complimentary or corollary fund for cleaning up abandoned hardrock mines.

Extend the authorization to 25 years rather than the 15 year extensions in the current bills.

Everyone agrees that the minimum amount of time needed to finish the job is 25 years. As such, TU supports extending the reauthorization to 25 years rather than the 15 years currently provided by both bills.

The coal fields have sustained us through some of our greatest national challenges, and now it is time to give back to those lands, and those who live on them, to see that they are restored.

Senators Thomas and Specter, Representatives Peterson, Sherwood, Cubin and Rahall have demonstrated good leadership by introducing bills to reauthorize this invaluable source of money. Also, we appreciate the strong role that Secretary Norton and the Department of the Interior have played in proposing a bill, introduced by Senator Specter and Representative Peterson, as well as the substantial funding increase for FY 2005 proposed by the Bush Administration from the Reclamation Fund. But the legislative road is long, and the legislative season is short. TU pledges to work with the Committee to help craft appropriate amendments and

move a bill to the Senate floor expeditiously. We owe it the communities of the coal fields to finish the job.

Senator THOMAS. Thank you.

Mr. Buckner.

STATEMENT OF MICHEAL BUCKNER, RESEARCH DIRECTOR, UNITED MINE WORKERS OF AMERICA, FAIRFAX, VA

Mr. BUCKNER. Thank you, Mr. Chairman. My name is Micheal Buckner. I am the research director for the United Mine Workers of America. We appreciate the opportunity to be here today.

Coal contributes significantly to our national economy, providing more than 50 percent of the electricity that American citizens use. American citizens I believe are woefully unaware of that fact. Many of them do not know that coal mining still exists. Coal miners are proud to do their part to provide domestically produced, low-cost energy to our Nation.

They also strongly support the goals of the Surface Mining Act. They know that we need to mine coal in an environmentally sound manner. They know that we need to provide energy to the Nation. They also know that we need to keep the promises that have been made to the retirees.

The debate about reauthorizing the Abandoned Mine Lands program will be full of very technical and complicated things, but it boils down to a very simple expression that we are debating about whether we are going to fulfill promises. Mr. Gauvin mentioned that we made a promise a generation ago that we would clean up the abandoned mine sites in the coal mining communities and we strongly support that.

In 1946, the United Mine Workers signed a contract with the Federal Government in the Oval Office of the White House with President Truman that promised that if coal miners would produce energy for the Nation, when they retired, they would have a pension and health care.

That system began to break down in the 1980's when we had conflicting court decisions. On the one hand, courts said that companies could walk away from those obligations by simply not signing a contract. On the other hand, the UMWA funds had a legal obligation to provide for that lifetime promise that originated in the White House.

The 1992 Coal Act, in the wake of the Pittston strike, which caused the intervention of the first Bush administration and the appointment of a blue ribbon Federal Coal Commission, the Coal commission look at it and said that no longer can we rely on collective bargaining to keep the promise that originated in the White House. They found that coal miners had a legitimate expectation but that expectation was in jeopardy. So the Congress took those recommendations and enacted the Coal Act.

The two promises were joined together and there was a specific reason that Congress joined together the promise of the Coal Act and the use of the AML interest money. That is because both of them represent legacy costs of the industry that compel a national solution. We cannot look to one company or one small group of companies to keep these promises.

The Coal Act created the UMWA Combined Benefit Fund and the UMWA 1992 benefit plan. Congress intended that the financial mechanisms would be self-sustaining, and everyone, when that law passed, thought that we had put that promise to bed and that there would be no longer a problem. But the combination of a series of adverse court decisions, rapidly rising health care costs, a number of bankruptcies of major contributing employers, particularly in the steel industry, and recent low interest earnings from the AML fund have eroded those mechanisms. As a result, Congress has had to intervene three times with emergency appropriations in the last 5 years to avert a disastrous benefit cut among this elderly population.

We were on the verge in the last few months of the trustees of the fund sending out notices that the benefits were about to be cut. I am pleased to report that the administration, with bipartisan support from members of Congress, has extended the Prescription Drug Demonstration program that was initiated in 2001. That has averted the disastrous benefit cut that was looming about a month ago. However, that is only a temporary reprieve and we need a long-term solution.

We believe that there is a growing bipartisan consensus within the administration and within the Congress that we need a long-term solution to these financial problems of the Coal Act.

We also think that it is fitting and proper that the wedding of the AML program with the fulfilling of this promise needs to be reauthorized. We need to provide for sufficient duration and level of tax to take care of the priority 1 and priority 2 reclamation needs. We need to focus the spending on the public health and safety projects. We need to resolve in this debate the longstanding political dispute between the States and OSM over the State share collections.

And last, but certainly not least in our mind, we need to provide that long-term financial solution so that we can finally tell these retirees that the promise that originated in the White House, that was reiterated by Congress in 1992 will be met and they do not have to worry from month to month or from year to year about whether their benefits are going to be secure. It is very heart-rending when we have meetings with our retirees to have an 85-year-old widow come up to you with fear in her eyes and say, am I going to have my benefits cut? That does not need to happen.

I think that the reforms embodied in the Cubin-Rahall proposal in the House—and I understand that a bipartisan group of Senators are in discussions about introducing a companion bill—can help alleviate those fears among these retired miners and widows, and the United Mine Workers supports H.R. 3796 and the reforms embodied in that proposal. We strongly encourage the Senate to look at those reforms when it considers the reauthorization of the program.

We stand ready to work with you, but we believe that all these promises need to be fulfilled and time is of the essence. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Buckner follows:]

PREPARED STATEMENT OF MICHEAL BUCKNER, RESEARCH DIRECTOR, UNITED MINE WORKERS OF AMERICA

Mr. Chairman, members of the Committee, I am Micheal Buckner, Research Director of the United Mine Workers of America (UMWA). The UMWA is a labor union that has represented the interests of coal miners and other workers in the United States and Canada for more than 114 years. We appreciate the opportunity to appear before the Committee to discuss the Abandoned Mine Land Reclamation Fund (AML Fund) and its vital relationship to the Coal Act. Representing people who live and work in the nation's coal fields, the UMWA has a strong interest in both the reclamation of abandoned mine lands and the preservation of health care for UMWA retirees who worked hard all their lives to provide the nation with energy. We strongly support the extension of the AML program in a way that accomplishes both these goals.

The UMWA supports the goals of the Surface Mining Act and the Abandoned Mine Lands program. When enacting the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Congress found that "surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner." That statement is as true today as it was in 1977. Coal mining contributes significantly to our national economy by providing the fuel for over half of our nation's electricity generation. Coal miners are proud to play their part in supplying our nation with domestically-produced, cost-effective, reliable energy. We also live in the communities most impacted by mining and support the intent of Congress that coal mining must be conducted in an environmentally sound manner.

The AML program, financed by production fees levied on the coal industry, was designed to provide the means to reclaim lands that had been mined in previous years and abandoned before reclamation had been done. The law was amended in 1991 to permit the investment of monies held in the AML Fund to earn interest. In 1992, the Energy Policy Act extended the AML fees until 2004 and authorized the use of AML interest to pay for the cost of benefits for certain eligible retirees under the Coal Act.

The UMWA believes that when Congress authorized the use of AML interest to finance the cost of health care for retired coal miners under the Coal Act, it was a logical extension of the original intent of Congress when the AML Fund was established. Congress joined these two programs together for a specific reason they both represent legacy costs of the coal industry that compelled a national response. When Congress created the AML Fund in 1977, it found that abandoned mine lands imposed "social and economic costs on residents in nearby and adjoining areas." When Congress enacted the Coal Act in 1992, it also had in mind how to avoid unacceptable social and economic costs associated with the loss of health benefits for retired coal miners and widows.

The UMWA Combined Benefit Fund (CBF) was created by Congress to provide health benefits to retired coal miners and their widows. Today, the Combined Benefit Fund provides health benefits to nearly 50,000 elderly beneficiaries who reside in nearly every state in the nation. The average age of the CBF beneficiary population is about 80 years, about two-thirds of them are widows and their total estimated annual health cost is about $360 million. Congress intended for the financial mechanisms it put in place to provide self-sustaining financing of the cost of those benefits. However, rapidly rising health costs, a series of adverse court decisions, bankruptcies of major contributing employers (particularly in the steel industry), and recent low interest earnings at the AML Fund have eroded those financing mechanisms and placed the CBF in financial jeopardy. The bankruptcies have also added thousands of new orphan retirees to the UMWA 1992 Benefit Fund and the UMWA 1993 Benefit Fund, placing serious strains on the financial operations of those two plans. These continuing financial difficulties highlight the need to include Coal Act reforms in the AML re-authorization.

Congress has intervened three times in the past five years to shore up the financial condition of the CBF through emergency appropriations of interest money from the AML Fund. In December 1999, Congress provided $68 million to cover shortfalls in CBF premiums. In October 2000, Congress appropriated up to $96.8 million to cover deficits in the CBF's net assets through August 31, 2001. And most recently, in January 2003, Congress appropriated $34 million from the AML interest account to the Combined Benefit Fund. In addition, the UMWA Funds and the Center for Medicare and Medicaid Services (CMS) expanded their existing nationwide, risk-sharing Medicare Demonstration project in January 2001 to include a new prescription drug component. That project was scheduled to run three years, until mid-2004,

and to reimburse the Funds for 27% of its Medicare prescription drug expenditures. It is a pilot project designed to demonstrate the efficacy of providing prescription drugs under Medicare, a timely project that we believe will prove useful to CMS and Congress as we expand prescription drug coverage to the Medicare population.

I am pleased to report that the Administration, with bi-partisan support from members of Congress, recently announced an extension of the prescription drug demonstration program that will increase the percentage reimbursement and extend the program until September 30, 2005. This infusion of additional cash is certainly welcome news, as it will prevent what otherwise would have been a disastrous benefit cut. This, however, is only a temporary reprieve. There is a clear and growing bi-partisan consensus that there is a pressing need for a long-term solution to the financial problems of the Coal Act.

The need for a long-term solution for the Coal Act coincides with the need to re-authorize the AML Fund. We believe the re-authorization effort can, and should, meet four broad policy objectives:

- Provide sufficient duration and level of tax to fund the reclamation needs;
- Focus on Priority 1 and 2 public health and safety projects;
- Resolve the long-standing dispute between states and OSM over the state share of collections; and,
- Provide long-term financial solvency for the Coal Act.

Three primary AML re-authorization bills have been introduced. The Administration proposal (S. 2049) has been introduced by Senator Specter of Pennsylvania. Senators Thomas and Enzi of Wyoming have introduced S. 2086. In the House of Representatives, a comprehensive AML reform bill (H.R. 3796, the Abandoned Mine Lands Reclamation Reform Act of 2004) has been introduced by Representatives Barbara Cubin of Wyoming and Nick Rahall of West Virginia. We have been advised that a bi-partisan group of Senators is in discussions about introducing a companion bill in the Senate. All of the AML proposals extend the authority of the AML to collect the reclamation fees at a lower rate than current law mandates. S. 2086 provides for the shortest duration of the fee and the lowest rate, and therefore raises less revenue than the other two major proposals. While both the Administration bill and the Cubin/Rahall bill lower rates for all production, S. 2086 only reduces fees for surface mining. Because of its shorter duration, it raises only about two-thirds of the amounts raised by S. 2049 and H.R. 3796, both of which raise about $3 billion of revenue with slight differences in fee duration and amounts. However, S. 2086 and S. 2049 do not provide for a long-term financial solution for the Coal Act. Only H.R. 3796 accomplishes that goal.

The UMWA strongly urges Congress to enact a re-authorization bill modeled on H.R. 3796, a proposal with broad bi-partisan support in the coal states. Wyoming, West Virginia and Kentucky are the nation's top three coal producing states, producing about 60% of the nation's coal output. Almost every member of the House of Representatives from these three essential coal producing states have co-sponsored H.R. 3796. If enacted, the Abandoned Mine Lands Reclamation Reform Act of 2004 would extend OSM fees for 15 years, lower the rate paid by coal producers, target greater resources to high priority reclamation sites that threaten human health and safety, resolve the long-standing dispute between the states and OSM about the state share of fee collections and provide for the long-term financial stability of the Coal Act.

The UMWA supports this legislative effort because we know that a promise was made by the federal government and by the coal industry that these retirees would have lifetime health benefits. Today we need the help of Congress to ensure that the promise is kept, and the reforms embodied in H.R. 3796 will accomplish that. We are not alone in urging Congress to act. Over the past few years, a number of state legislatures in coal field states (Alabama, Illinois, Indiana, Kentucky, Pennsylvania and West Virginia), along with dozens of county and city governments, have adopted resolutions urging Congress and the Administration to ensure that retired miners continue to receive the health benefits they were promised. These state and local political authorities know how important the UMWA Funds is to their state's medical infrastructure and how vitally necessary the health benefits are to the retirees and their families.

Given the need to re-authorize the Abandoned Mine lands program, and the growing bi-partisan consensus that we need a long-term fix to the problems of the Coal Act, now is the time to act.

GAO STUDY

In 2002, the U.S. General Accounting Office (GAO) issued its most recent report on the Coal Act entitled "Retired Coal Miners' Health Benefit Funds: Financial Challenges Continue." Among the findings of the GAO were that:

- the Combined Benefit Fund faces continuing financial challenges which have been exacerbated by various adverse court decisions that have reduced the per beneficiary premiums paid to the CBF and relieved some companies of responsibility for paying for their beneficiaries;
- CBF beneficiaries traded lower pensions over the years for the promise of their health benefits and have engaged in considerable cost sharing by contributing $210 million of their pension assets to help finance the CBF;
- the benefits provided to Coal Act beneficiaries are generally comparable to coverage provided by major manufacturing companies and companies with unionized work forces;
- CBF beneficiaries tend to be sicker, and therefore use more health care, than the average Medicare population; and
- the CBF trustees have adopted numerous managed care initiatives and have a history of achieving savings against their Medicare targets in demonstration projects, thus saving money not only for the Funds but for Medicare and the U.S. Treasury.

The most recent GAO report clearly supports the positions we have taken before Congress and the need for additional legislation. A promise made in the White House in 1946 was reaffirmed in 1992. Congress intended the Coal Act to be self-sustaining and self-financing, but subsequent court decisions have eroded that financing. There is no question that this is an elderly, frail population that is sicker than the general Medicare population and deserves the benefits they were promised. There is also no question that the Funds have aggressively managed the benefit plans and instituted state-of-the-art managed care programs that aim to improve the quality of care and reduce costs. Unfortunately, there is also no question that the nation's promise to retired coal miners will be violated if we do not enact a long-term financial solution to the Coal Act funding crisis.

This is a unique population and a unique situation. We are unaware of any other case in which a major industry-wide health and welfare plan in the private sector was created in a contract between the federal government and the workers. All three branches of our government have played substantial roles in creating, shaping and determining the fate of the UMWA Funds. The General Accounting Office clearly laid out the financial difficulties facing the Funds and more recent actuarial projections show that Congress must act in order to shore up the financial structure. Again, we encourage members of Congress to enact legislation modeled on H.R. 3796, the Abandoned Mine Lands Reclamation Reform Act of 2004.

THE UMWA HEALTH AND RETIREMENT FUNDS AND THE U.S. GOVERNMENT

The UMWA Health and Retirement Funds (the Funds) was created in 1946 in a contract between the United Mine Workers of America and the federal government during a time of government seizure of the mines. The contract was signed in the White House with President Harry Truman witnessing the historic occasion.

The UMWA first began proposing a health and welfare fund for coal miners in the late-1930s but met strident opposition from the coal industry. During World War II, the federal government urged the union to postpone its demands to ensure coal production for the war effort. When the National Bituminous Wage Conference convened in early 1946, immediately following the end of the war, a health and welfare fund for miners was the union's top priority. The operators rejected the proposal and miners walked off the job on April 1, 1946. Negotiations under the auspices of the U.S. Department of Labor continued sporadically through April. On May 10, 1946, President Truman summoned John L. Lewis and the operators to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund.

Despite the White House announcement, the coal operators still refused to agree to the creation of a medical fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed. Faced with the prospect of a long strike that could hamper post-war economic recovery, President Truman issued an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the union "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the next day. Negotiations between representatives of the UMWA and the federal government continued, first at the Interior De-

partment and then at the White House, with President Truman participating in several conferences.

After a week of negotiations, the historic Krug-Lewis agreement was announced and the strike ended. It created a welfare and retirement fund to make payments to miners and their dependents and survivors in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the trustees. The fund was to be managed by three trustees, one to be appointed by the federal government, one by the UMWA and the third to be chosen by the other two. Financing for the new fund was to be derived from a royalty of 5 cents per ton of coal produced.

The Krug-Lewis agreement also created a separate medical and hospital fund to be managed by trustees appointed by the UMWA. The purpose of the fund was to provide for medical, hospital, and related services for the miners and their dependents. The Krug-Lewis agreement also committed the federal government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in coal mining areas." The expressed purpose was to determine what improvements were necessary to bring coal field communities in conformity with "recognized American standards."

To conduct the study, the Secretary chose Rear Admiral Joel T. Boone of the U.S. Navy Medical Corps. Government medical specialists spent nearly a year exploring the existing medical care system in the nation's coal fields. Their report, "A Medical Survey of the Bituminous Coal Industry," found that in coal field communities, "provisions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

Thus the Boone report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong federal government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

The Funds established ten regional offices throughout the coal fields with the direction to make arrangements with local doctors and hospitals for the provision of "the highest standard of medical service at the lowest possible cost." One of the first programs initiated by the Funds was a rehabilitation program for severely disabled miners. Under this program, more than 1,200 severely disabled miners were rehabilitated. The Funds searched the coal fields to locate disabled miners and sent them to the finest rehabilitation centers in the United States. At those centers, they received the best treatment that modern medicine and surgery had to offer, including artificial limbs and extensive physical therapy to teach them how to walk again. After a period of physical restoration, the miners received occupational therapy so they could provide for their families.

The Funds also made great strides in improving overall medical care in coal mining communities, especially in Appalachia where the greatest inadequacies existed. Recognizing the need for modern hospital and clinic facilities, the Funds constructed ten hospitals in Kentucky, Virginia and West Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs and training for professional and practical nurses. Thus, because of the Funds, young doctors were drawn to areas of the country that were sorely lacking in medical professionals. A 1978 Presidential Coal Commission found that medical care in the coal field communities had greatly improved, not only for miners but for the entire community, as a result of the UMWA Funds. "Conditions since the Boone Report have changed dramatically, largely because of the miners and their Union—but also because of the Federal Government, State, and coal companies." The Commission concluded that "both union and non-union miners have gained better health care from the systems developed for the UMWA."

THE COAL COMMISSION

In the 1980s, medical benefits for retired miners became a sorely disputed issue between labor and management, as companies sought to avoid their obligations to retirees and dump those obligations onto the UMWA Funds, thereby shifting their costs to other signatory employers. Courts had issued conflicting decisions in the 1980s, holding that retiree health benefits were indeed benefits for life, but allowing

individual employers to evade the obligation to fund those benefits. The issue came to a critical impasse in 1989 during the UMWA-Pittston Company negotiations. Pittston had refused to continue participation in the UMWA Funds, while the union insisted that Pittston had an obligation to the retirees.

Once again the government intervened in a coal industry dispute over health benefits for miners. Secretary of Labor Elizabeth Dole appointed a special "super-mediator," Bill Usery, also a former Secretary of Labor. Ultimately the parties, with the assistance of Usery and Secretary Dole, came to an agreement. As part of that agreement, Secretary Dole announced the formation of an Advisory Commission on United Mine Workers of America Retiree Health Benefits, which became known as the "Coal Commission." The commission, including representatives from the coal industry, coal labor, the health insurance industry, the medical profession, academia, and the government, made recommendations to the Secretary and the Congress for a comprehensive resolution of the crisis facing the UMWA Funds. The recommendation was based on a simple, yet powerful, finding of the commission:

> Retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives, and that is how they planned their retirement years. That commitment should be honored.

The underlying Coal Commission recommendation was that every company should pay for its own retirees. The Commission recommended that Congress enact federal legislation that would place a statutory obligation on current and former signatories to the National Bituminous Coal Wage Agreement (NBCWA) to pay for the health care of their former employees. The Commission recommended that mechanisms be enacted that would prevent employers from "dumping" their retiree health care obligations on the UMWA Funds. Finally, the Commission urged Congress to provide an alternative means of financing the cost of "orphan retirees" whose companies no longer existed.

THE COAL ACT

Recognizing the crisis that was unfolding in the nation's coal fields, Congress acted on the Coal Commission's recommendations. The original bill introduced by Senator Rockefeller sought to impose a statutory obligation on current and former signatories to pay for the cost of their retirees in the UMWA Funds, require them to maintain their individual employer plans for retired miners, and levy a small tax on all coal production to pay for the cost of orphan retirees. Although the bill was passed by both houses of Congress, it was vetoed as part of the Tax Fairness and Economic Growth Act of 1992.

In the legislative debate that followed, much of the underlying structure of the Coal Commission's recommendations was maintained, but there was strong opposition to a general coal tax to finance orphan retirees. A compromise was developed that would finance orphans through the use of interest on monies held in the Abandoned Mine Lands (AML) fund. In addition, the Union accepted a legislative compromise that included the transfer of $210 million of pension assets from the UMWA 1950 Pension Plan. With these compromises in place, the legislation was passed by Congress and signed into law by President Bush as part of the Energy Policy Act.

Under the Coal Act, two new statutory funds were created—the UMWA Combined Benefit Fund (CBF) and the UMWA 1992 Benefit Fund. The former UMWA 1950 and 1974 Benefit Funds were merged into the Combined Fund, which was charged with providing health care and death benefits to retirees who were receiving benefits from the UMWA 1950 and 1974 Benefit Plans on or before July 20, 1992. The CBF was essentially closed to new beneficiaries. The Coal Act also mandated that employers who were maintaining employer benefit plans under UMWA contracts at the time of passage would be required to continue those plans under Section 9711 of the Coal Act. Section 9711 was enacted to prevent future "dumping" of retiree health care obligations by companies that remain in business. To provide for future orphans not eligible for benefits from the CBF, Congress established the UMWA 1992 Benefit Fund to provide health care to miners who retired prior to October 1, 1994 and whose employers are no longer providing benefits under their 9711 plans.

The CBF is financed by per-beneficiary premiums paid by employers with retirees in the fund. The premium is set by the Social Security Administration and is escalated each year by the medical component of the Consumer Price Index. Interest earned by the AML Fund is made available to finance the cost of orphan retirees. The remainder of CBF income derives from Medicare capitation and risk sharing arrangements, DOL Black Lung payments, investment income and miscellaneous

court settlements. The benefits for orphans covered by the UMWA 1992 Fund are financed solely by operators that were signatory to the NBCWA of 1988.

In passing the Coal Act, Congress recognized the legitimacy of the Coal Commission's finding that "retired miners are entitled to the health care benefits that were promised and guaranteed them." Congress specifically had three policy purposes in mind in passing the Coal Act:

> (1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;
> (2) to allow for sufficient operating assets for such plans; and
> (3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

Without question, Congress intended that the Coal Act should provide "sufficient operating assets" to ensure the continuation of health care to retired coal miners. However, the financial mechanisms have been eroded and have placed the Coal Act in continuing financial crises.

RECENT COURT DECISIONS

The 2002 GAO study found that a number of court decisions have eroded the financial condition of the Combined Fund and the legal onslaught on the Coal Act continues. While Congress clearly intended that the Coal Act be financially self-sustaining, various court decisions have undercut Congressional intent. A 1995 decision by a federal court in Alabama in *NCA* v. *Chater* overturned the premium determination by the Social Security Administration (SSA) and reduced the premium paid by employers by about 10%. Over time, the effect of this decision was to remove hundreds of millions of dollars from the financing structure of the Coal Act. A 1999 decision by the same court ordered the CBF to return about $40 million in contributions to the employers, representing the difference between the original SSA premium rate actually paid and the rate established in NCA. The trustees of the CBF filed suit against the Social Security Administration in the District of Columbia in an attempt to set aside the NCA decision. In late-2002, the D.C. Court struck down the Social Security Administration's nationwide application of the NCA decision and ordered SSA to report to the Court what premium rate should apply to companies not covered by the NCA decision. In June 2003, SSA notified the Court it would apply a higher premium to companies not covered by the earlier decision. However, over 200 companies have filed another action in Alabama asking to avoid paying the higher rate.

In 1998, the Supreme Court rendered a decision in Eastern Enterprises that struck down the obligation to contribute to the CBF for companies that were signatory to earlier NBCWAs but did not sign the 1974 or later contracts. Those employers were relieved of their contribution obligations in the future and the Combined Fund returned millions of dollars in prior contributions. Most of these retirees are now part of the unassigned beneficiary pool whose benefits are funded from other sources. Since that time, a number of other companies who signed the 1974 or later NBCWAs have also attempted to convince the courts that they, too, should be relieved of their responsibility. I am pleased to report that most of these cases have now completed their appeals process, with the courts holding that the companies cannot walk away from their Coal Act obligations.

The cumulative effect of these court decisions threatened a repetition of the problems and re-creation of the crisis of the 1980s that led to the creation of the Coal Act, meaning employers have been relieved of liability for their retirees and revenues have been significantly reduced from the employers that remain obligated. Compounding the revenue loss stemming from these court decisions is the fact that the escalator used to adjust the premium for inflation (the medical component of the Consumer Price Index) is inadequate to measure the health care cost increases in a closed group of aging beneficiaries who experience annual increases in utilization. The combination of loss of income, an increasing orphan population and an inadequate escalator have led to an imminent financial crisis for Coal Act beneficiaries.

I mentioned earlier the bankruptcies of a number of steel companies that had retirees covered by the Coal Act. Recent bankruptcies at LTV, Bethlehem Steel and other steel companies have further reduced the premiums paid to the CBF, increased orphan costs for the AML fund, and added thousands of 9711 plan beneficiaries to the 1992 Plan. The growth in the orphan population has forced a dwindling number of employers to fund a growing burden of health care expenses for retirees who did not work for them. The magnitude of these bankruptcies, which we

believe that Congress did not anticipate when it passed the Coal Act, has exacerbated the problems of the Coal Act and reinforce the call for a long-term solution.

NOW IS THE TIME FOR A LONG-TERM SOLUTION

Mr. Chairman, there is a growing bi-partisan consensus that Congress needs to forge a long-term solution to the financial problems of the Coal Act. We believe that the re-authorization of the AML Fund provides the best opportunity to do so. Over their working lives, these retirees traded lower wages and pensions for the promise of retiree health care that began in the White House in 1946. In 1992, they willingly contributed $210 million of their pension money to ensure that the promise would be kept. Everything that this nation has asked of them in war and in peace they have done. They are part of what has come to be called the "Greatest Generation" and deservedly so. They have certainly kept their end of the bargain that was struck with President Truman. But now they find that the promise they worked for and depended on is in jeopardy of being broken. We must stand up and say that this promise will be kept. We can do so by enacting H.R. 3796.

Mr. Chairman, we thank you for the opportunity to add our support to the effort to re-authorize the AML program and to provide a long-term solution to the financial problems of the Coal Act. I would be happy to answer any questions you may have.

Senator THOMAS. We have been joined by the Senators from Kentucky and from Tennessee. Mr. Bunning, did you have a statement?

Senator BUNNING. I have a short statement if it is all right.

Senator THOMAS. Yes.

STATEMENT OF HON. JIM BUNNING, U.S. SENATOR FROM KENTUCKY

Senator BUNNING. Thank you, Mr. Chairman. I am glad we are holding this hearing today on a very important issue for Kentucky and the Nation. Abandoned mine reclamation is a vital issue for people living near coalfields. This is a particularly significant issue for the citizens of Kentucky. This program helps to eliminate health and safety dangers associated with past mining. It also ensures that abandoned mine land is reclaimed to provide a better environment.

I have worked hard during my time in the Senate to ensure that this vital program continues. Every year I ask the appropriators to give increased funding to it. Every year since I have been in the Senate. Over $1.6 billion is currently sitting in the fund, and I believe that the money should be going directly to the States instead of being used by the Federal Government for other purposes.

Kentucky has over $330 million worth of high priority abandoned mine land areas that still need to be reclaimed. It is third in the Nation for having the worst reclamation problems. Third.

Therefore, I believe that reauthorization of this program needs to be completed this year. We cannot let this program simply end when much remains to be done.

I would like to see some changes to the program. One of these changes is to see Kentucky receive more of its State share back from the Federal Government. Kentucky's share is about $128 million. That money could help Kentucky reclaim more land which would better the environment and the citizens living near and around the coalfields.

I look forward to hearing about the legislation that has been introduced in the Senate. I believe that Senator Thomas' proposal is

a very good start at helping Kentucky because it gives more money back to the States.

I am also pleased to have testifying here today Mr. Steve Hohmann who is Director of the Kentucky Division of Abandoned Mine Lands. Mr. Hohmann has worked tirelessly on this issue to help Kentucky reclaim its mines in an effective manner and in a productive manner. I appreciate you being here.

Thank you, Mr. Chairman.

Senator THOMAS. Senator Alexander.

STATEMENT OF HON. LAMAR ALEXANDER, U.S. SENATOR FROM TENNESSEE

Senator ALEXANDER. Thank you, Mr. Chairman, and thank you to the witnesses for coming.

Abandoned mining lands can be a serious health and environmental threat. The clean water problems caused by these activities is especially pronounced and especially a concern to me. It makes land unusable and it keeps some of our poorest counties in Tennessee from cleaning up their land and cleaning up their water and getting themselves in a position to attract and create good, new jobs. So I agree with what Senator Bunning said, and I commend the leadership of the other Senators in moving toward the reauthorization of this.

I hope we will have enough money in this reauthorization and subsequent appropriations to, as the Secretary said, finish the job. I will be listening and reading the testimony to see if the years suggested here are long enough for that.

I am wondering about whether we should reduce the fee in light of all the needs that we have. In Tennessee, it will probably take, they say, $33 million to clean up high priority sites and sites that impact the general welfare of our rural communities. I believe the general welfare provision is an important provision.

Tennessee has the most serious problem with priority 1 and 2 sites of the non-program States. We are on a par with Arkansas and Maryland which are minimum program States.

There is another issue with so-called super reach-back companies, Mr. Chairman, because the 1992 Coal Act required certain companies to pay benefits. The law was held unconstitutional. Some companies got paid back by the Federal Government, some did not. Those that did not should be refunded their payments like the other companies.

I am hoping we can learn more about the appropriate reclamation fee level on coal, the appropriate period for collection of the fees, as I mentioned a little earlier. I am here today to hope we can get a better understanding of the level of effort necessary to finish the job.

And I thank the chairman for his work on his legislation and for scheduling the hearing.

Senator THOMAS. Thank you.

We will have a little round of questions now and we will try to be short in our questions, and perhaps you can be short in your answers as well.

Mr. Jarrett, you talked about the difficulty in setting priorities and so on. Would it not be helpful if the States receiving the money

were directly involved in setting the priorities themselves and spending the money?

Mr. JARRETT. Senator, the States do set the priorities on their inventory. The inventory numbers and the priority of those sites have all been established by the States.

Senator THOMAS. Well, the States do not have the money. The Feds decide how they use the money.

Mr. JARRETT. The Federal SMCRA determines how the money gets allocated to the States. The allocation formula is set by law. That allocation formula dictates on an annual basis how much money each State gets. Essentially the way that works is whatever the appropriation is that we get on an annual basis, that amount of money is divided up into two pots, if you will. One of those pots is distributed on the basis of current production. The other pot of money is distributed on the basis of historic production so the States would get an amount of money out of each of those pots, an amount equal to their percentage of the national total for historic production and current production.

Senator THOMAS. That is true, but you are talking about one-half of the funds. The other half is not going out there. I mean, that is what this is all about.

Mr. JARRETT. I think that is part of what this is about, and it is true. There are about $1.6 billion that has not been appropriated.

Senator THOMAS. Well, I just am saying that States ought to have, it seems to me, a little more direct funding to their programs.

Mr. Hohmann, if we continue with the 50/50 split on the tax, half for the Feds, half for the States, what would be wrong with having the half go directly to the States?

Mr. HOHMANN. Senator, I think that, representing the associations, our consensus opinion on that is that we think the 50 percent State share should be returned to the States as expeditiously as possible, and that is Kentucky's position also.

Senator THOMAS. Well, I am going a little further than that. I am saying when it is extracted, just like the fee on mineral rights, they go directly to the States. They do not go to the Feds.

Mr. HOHMANN. We have really never discussed that before, but a direct reimbursement to the States would be something that would be unique and would eliminate that.

Senator THOMAS. Well, it is not unique in the mineral business. That is the way it is done. When you lease oil or gas lands, there is a certain amount and part of it goes directly to the State and part of it goes directly to the Feds.

Mr. Green, have you ever thought much about—what is it—low Btu coal in the West is worth about $5.50, something like that.

Mr. GREEN. That is correct, Mr. Chairman.

Senator THOMAS. Coal in the East is worth like $45 or something like that.

Mr. GREEN. That is my understanding, yes, sir.

Senator THOMAS. But they both pay 35 cents.

Mr. GREEN. If they were surfaced mined, Mr. Chairman, that is correct.

Senator THOMAS. Is that a fair way to do it? What I am saying is the percentage of the cost is 1 percent for some people and 6 or 8 or 10 percent for someone else.

Mr. GREEN. Mr. Chairman, I think we would agree with your position on that issue, that a percentage of the selling price of the coal could be a more equitable way of assessing the reclamation fee. Yes, sir.

Senator THOMAS. One of the more immediate problems has been transportation. You have a ton of coal in Wyoming. It goes back to Indiana or somewhere in the Midwest. It costs three times as much to get the coal there as it does to produce the coal. So the fee is sometimes unfair.

Well, I will stop and we will go around. Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman.

Mr. Jarrett, you are speaking for the administration here. Your position, as I understand it, is that you favor reducing the fee although there are enormous unmet needs out there. Is it also your position that you favor the proposal Senator Thomas is making to go ahead and directly fund this off budget? I mean, the proposal is that the money would not be subject to appropriation, would not be subject to budget limits in any way, as I understand it. Is that the administration's position?

Mr. JARRETT. That is not the administration's position. Our proposal requires discretionary budget spending.

Senator BINGAMAN. So you do not favor direct spending of these funds.

Mr. JARRETT. That is correct.

Senator BINGAMAN. And what is your position on cutting the fee? Senator Alexander asked about that. You believe we should cut the fee?

Mr. JARRETT. It would be my belief that the State of Wyoming felt that fee reduction was an important feature. I have personally talked to many in the mining industry who tell me that fee reduction is not necessary. All coal operators, obviously, do not agree with that. But it is my understanding that as long as all operators are paying the same fee and no one operator is given a competitive advantage or disadvantage over another operator, that the amount of the fee is not critical.

Some operators insist that there be a fee cut. We have thought hard to increase our budget request, and as you know, we have increased our budget request by $53 million in our 2005 budget. So the fee cuts that we have proposed represent the difference between what our total budget request is and what the AML fee collection projections would be without the reduction. So we are remaining relatively revenue neutral.

Senator BINGAMAN. I am still not clear. Are you supporting a fee cut or not?

Mr. JARRETT. We are supporting a fee cut.

Senator BINGAMAN. I am concerned that we allow States to deal with their hardrock mine reclamation problems on the same basis that they are able to deal with their coal mine reclamation problems. Do either of these bills restrict the use of AML funding for non-coal reclamation as compared to current law?

Mr. JARRETT. The administration's proposal does not make that restriction, and as I understand Senator Thomas' proposal, it likewise does not impose that restriction.

Senator BINGAMAN. So from your perspective, that option should be available to the States to use these funds in the same way with regard to non-coal reclamation.

Mr. JARRETT. Senator, under our proposal, we tried to devise a proposal that would provide each of the States the amount of money that they would need to reclaim their priority 1 and priority 2 coal-related AML problems. But I do believe that the States should have the discretion, once they receive that amount of money, to spend it on what that State believes is the most important project. So if a State has an abandoned hardrock mine that is, in the State's view, far more dangerous than one of the abandoned coal mine sites, we believe the State should have the discretion to make that choice.

Senator BINGAMAN. Why should we not be trying to allocate funds on the basis of the number of non-coal mines as well as the number of coal mines?

Mr. JARRETT. I would be concerned about that proposal and question the fairness of asking the coal industry to pay for reclamation of non-coal sites.

Senator BINGAMAN. Would you support any effort to obtain funds to deal with these non-coal sites? If we should not use the coal-generated revenues in that way, what should we do about the non-coal sites?

Mr. JARRETT. Well, under our proposal, under current law, and under Senator Thomas' proposal, they can use the AML dollars to reclaim those sites. I would personally be very interested in working with anyone who wanted to develop a program that dealt with the abandoned non-coal sites in a more comprehensive way than we are doing under our program.

Senator THOMAS. Thank you.

Senator BINGAMAN. Have I asked all my questions?

[Laughter.]

Senator THOMAS. We will come back.

Senator Bunning.

Senator BUNNING. Thank you.

Mr. Jarrett, Mr. Hohmann, Kentucky has over—over—$330 million of high priority reclamation that remains to be done presently. The administration's proposal provides Kentucky with only $400,000 more for fiscal year 2005. It was appropriated in fiscal year 2004. Yet, States such as Virginia and Ohio received $700,000 and $1.6 million more in funding, respectively. Why do States with less reclamation problems than Kentucky receive more money under the administration's proposal? Why is Kentucky's share of reclamation funding as low as it is?

Now, do not give me the old following the formula stuff because we pay a heck of a lot more into that AML abandoned mine fund than Virginia and Ohio combined. So let us look at it in a reasonable fashion. Why is Kentucky sucking wind as far as getting money back to reclaim the mines and the damage done by the mines?

Mr. JARRETT. Under the administration's proposal, each State would receive an equal share of funds based on the magnitude of the problem because under our proposal, we would be distributing the money based on historic production. So a State like Kentucky that has almost 11 percent of the AML problems on a nationwide basis would get 11 percent of however much money Congress actually appropriated in any 1 year.

Senator BUNNING. Well, then why are we doing—under this present administration's funding level, why is it so low compared to other States that are much more in line and have less problems in reclamation than Kentucky does? Certainly Virginia and Ohio do not have 11 percent of the historical coal production.

Mr. JARRETT. That is true, but if we are talking about the current allocation, the 2003 allocation or the 2004 allocation, which is being made under current law, we are not allowed. We do not have the authority to distribute money based on the magnitude of the problem. That is the issue that we are trying to address in our proposal.

Senator BUNNING. Mr. Jarrett, OSM has said that its plan will be better for the Nation because States that have finished their reclamation will get out of the program, leaving more money for other States under the administration's proposal. What steps will OSM take to ensure that States that have finished their reclamation will get out of the program and not request continued funding?

Mr. JARRETT. The only way to accomplish that is to change the allocation formula, as we have proposed, so that those distributions will be based solely on the magnitude of the AML problem. Under our proposal and under current law, once a State has completed that AML reclamation, it is no longer entitled to a distribution from the historic production account.

Senator BUNNING. What is the problem with distributing the money that is in the trust fund in direct proportion to the needs of the States that need the money?

Mr. JARRETT. That is exactly what we are proposing in the administration's bill.

Senator BUNNING. No, you are not because when I proposed it in a law, the administration opposed the law that I proposed. So maybe you were not there but maybe someone else might have been. But the administration did not cooperate and we still have the huge problem in Kentucky.

Mr. JARRETT. I am not familiar with——

Senator BUNNING. I proposed bringing the exact amount of dollars that Kentucky had contributed into the fund back to Kentucky to take care of the needs.

Thank you for your time.

Senator THOMAS. Thank you, Senator.

Senator Alexander.

Senator ALEXANDER. Thank you, Mr. Chairman.

I have got a couple of questions about the general welfare provisions to make sure that I understand them properly. Perhaps, Mr. Jarrett, you would be the right one to ask. How much would it cost to reclaim abandoned mining lands if the general welfare provisions are kept in the law?

Mr. JARRETT. We have on the inventory $3.6 billion worth of construction to complete the priority 2 general welfare problems.

Senator ALEXANDER. Any of you might want to comment on this. What are the potential health and environmental impacts of not including the general welfare provisions in the law?

Mr. GAUVIN. Senator, I think you would find in certain key watersheds in the country an inability to continue addressing problems in headwater streams where you do not typically have the most pressing public safety problems, but where you have continuing contributions of principally acid mine drainage to major watersheds.

The west branch of the Susquehanna, a principal tributary of the Chesapeake Bay system, has about a 15-mile dead zone in its mainstem which is the result of cumulative acid mine drainage contributions from headwater streams in north central Pennsylvania. Most of the work on those streams would not come within the first priority of public health and safety, but I think all would agree that it is critical work not only for the Chesapeake Bay but for the economies of the communities involved. I am sure you could find examples in Kentucky, Tennessee, and elsewhere.

Senator ALEXANDER. Anyone else on that question?

[No response.]

Senator ALEXANDER. The only other comment—I am trying to understand the relationship of the fee level to the Secretary's statement that we want to finish the job. And comments have been made about the fact that in the end it is a minimal charge on the electricity costs. So I guess my question would be, why are we considering reducing the fee when there is so much to be done? I suppose part of the answer is that not all the money ends up going to do what it is supposed to do.

But would any of you like to make a comment on the fee level, in addition to what you have said in your statements, the fee level as compared with the size of finishing the job?

[No response.]

Senator ALEXANDER. Does that mean you all think it should be the same or reduced or increased?

Mr. BUCKNER. Senator, the mine workers think that we need to have a fee set at an appropriate level and duration to take care of the reclamation needs. The estimates are that there are about $3 billion of priority 1 and 2 public health and safety issues. We think that should be the first focus. I believe that the administration bill and the Cubin-Rahall bill both would raise approximately the same amount of money, in the range of about $3 billion. I believe Mr. Thomas' bill, because of its shorter duration, would raise only about two-thirds of that amount of money.

Senator ALEXANDER. Thank you, Mr. Chairman.

Senator THOMAS. You are welcome. Thank you.

Mr. Green, we talk about the priorities and the certification of some States which has an impact, apparently, on the distribution. This goes back to the 1970's I believe. How do you feel about the certification process?

Mr. GREEN. Mr. Chairman, you are correct that Wyoming is in a somewhat unique position in that we are the major contributor to the AML trust fund and also have a unique status as a certified

State. I think it is unfortunate that our status as a certified State has been interpreted to mean that we no longer have any priority 1 or priority 2 coal problems remaining and that misconception is often extended to the assumption that we have no priority 1 or priority 2 hardrock or non-coal problems left in the State of Wyoming.

As I mentioned in my written testimony, the State of Wyoming certified in 1984, as a result of some serious mine-related deaths that had occurred at non-coal sites. Inventory processes that were available to us at that time were somewhat rudimentary. In fact, they were based only on aerial photography and not on research into historic mine maps in historic mining districts. I can only assume that the decision to certify was made jointly by elected officials in the State of Wyoming at that time and that certification request was approved by OSM at that time. One would hope that they made that decision in the best interests of the program in the State of Wyoming.

I think, however, all States have underestimated the long-term effects of the deteriorating conditions in historic coal mine areas as well as non-coal areas. As I mentioned, we have got over 30,000 acres in one county. In Sweetwater County alone, we have approximately 30,000 acres of land that has been undermined by historic coal production activities. We have mitigated about 8,000 acres that exist within the city limits of Rock Springs. But we see a need for continuing funding available to the State of Wyoming to address those ongoing coal problems.

Senator THOMAS. Good. Thank you.

I have a question here that Chairman Domenici sent Mr. Jarrett. In 1992, Congress ordered you to transfer the interest from AML funds to the United Mine Workers Combined Benefit Fund to cover health premiums. If the interest is insufficient to cover the shortfall, the Secretary is ordered to make up the difference, up to $70 million. The law is unclear regarding how the amount due is determined other than the trustees of the CBF will estimate how much to be debited. Exactly how does this work? How do you determine how much money to send to CBF?

Mr. JARRETT. On an annual basis, the managers of the Combined Benefit Fund give us the estimate of their needs. Our finance staff also makes an estimate of the amount of interest we will earn during the coming year, and we transfer the lower amount of those two, up to $70 million. Then in subsequent years, once the final numbers are in and our books are audited, we make adjustments.

Senator THOMAS. So, Mr. Buckner, this is following on Mr. Domenici's question. It says, I cannot think of another government program where we transfer government funds to a private party where the party determines the amount of payment without any kind of government oversight.

Mr. BUCKNER. Well, I think clearly there is oversight, as Mr. Jarrett just pointed out. The UMWA health and retirement funds and OSM have a memorandum of understanding that governs the transfer of those funds. It is based on a projection of what the needs will be for the coming year. At the end of that year, based on actual health expenditures, there is an adjustment. In some years the fund pays back OSM. In some years OSM owes more

money to the fund. But the adjustment is made and the oversight is there.

Senator THOMAS. But there is no third party that independently evaluates whether your requests are legitimate or illegitimate.

Mr. BUCKNER. Well, I assume that OSM looks at the fund's books. The General Accounting Office has done a number of studies of——

Senator THOMAS. General Accounting has?

Mr. BUCKNER. Yes, a number of studies of the Combined Benefit Fund. And I would assume that the Inspector General of the Interior Department also would have authority if there are questions, but I believe that——

Senator THOMAS. Well, it seems on the surface that here is a group that is going to get money, I tell you how much money I want, and they pay it. That is an unusual situation.

Mr. BUCKNER. But that is so that the benefits can flow during the year. At the end of the year, there is a true-up and if the OSM transfer has been in excess of the actual health expenditures, the fund pays back OSM that difference.

Senator THOMAS. Do you know, Mr. Jarrett, how much money has been generated in this fund since it began, the AML fund?

Mr. JARRETT. Total interest?

Senator THOMAS. Total. Not total interest. Total payments from production.

Mr. JARRETT. We will be glad to provide that information.

Senator THOMAS. I would like to know how much has been generated and how much has been spent on reclamation.

Mr. JARRETT. On reclamation?

Senator THOMAS. Yes.

Mr. JARRETT. And interest transferred?

Senator THOMAS. I am not worried about that.

Mr. JARRETT. Okay, I am sorry.

Senator THOMAS. You are talking about reclamation being the reason for this whole thing. I would like to know how much money was paid in by the producers, total, and how much has been spent on reclamation.

Mr. JARRETT. I will be glad to provide that to the committee.

Senator THOMAS. I am about through here. Do you have the authority to look at the books for the Combined Benefit Fund?

Mr. JARRETT. I think there are controls in place to make sure that the money that we send to the Combined Benefit Fund is spent for the purpose.

Senator THOMAS. Maybe you could tell me how that works. Would you? If you do not know, find out what the real authority is and who does it and how detailed it is.

Mr. JARRETT. We will be glad to provide that to you, Senator. I think the real issue is who is conducting oversight of the Combined Benefit Fund.

Senator THOMAS. That is right.

Mr. JARRETT. We can verify that the money we sent was spent for the purpose for which it was intended, but that is different than saying we provide oversight over how that program is being managed.

Senator THOMAS. There is a feeling among some, not necessarily me, that there is not enough oversight on that as to how it is actually done.

Senator.

Senator BINGAMAN. Thank you, Mr. Chairman.

Mr. Jarrett, one of the points I made in my opening statement—and I think President Shirley made it too—is that we would like to be sure that tribes are treated in the same way that States are treated under this legislation and under this program. How do the two bills that we are considering here today differ with regard to the treatment of Indian tribes under the AML program?

Mr. JARRETT. Both of the bills treat the tribes the same as they treat the States with respect to the AML program. Now, under Senator Thomas' proposal, the tribes, as would the States, would continue to be eligible to receive 50 percent State share of future collections. Under the administration's proposal, the States and the tribes would not be eligible to receive 50 percent State share of future collections. But both bills, while they treat them differently, each bill treats the tribes exactly the same way they treat the States.

Senator BINGAMAN. One of the other points that President Shirley made is that he believes that tribes, particularly the Navajo Nation, should be able to assume primacy for the regulation of coal mining activities on their land. What is the administration's position on that?

Mr. JARRETT. Our position on that issue is that that is prohibited under current law and certainly within Congress' right to amend SMCRA to allow that.

Senator BINGAMAN. And you have no problem with us doing so? You do not oppose that amendment?

Mr. JARRETT. We would obviously want to see exactly what that amendment said. We have met with many of the tribes on this issue, and I do not believe that they are asking that they just be given carte blanche authority to run their regulatory program. I think they want to be treated the same as the States in the sense of we want to apply for it and go through the scrutiny that we would go through with any State to decide whether or not to grant primacy.

Senator BINGAMAN. And current law does not allow you to do that?

Mr. JARRETT. That is correct.

Senator BINGAMAN. I think there is a statement in your testimony about how you are seeking authority for the Secretary to certify completion of coal reclamation in a State. Has there been a problem in your not being able to do this? I do not really understand what the issue is here that we need to be addressing.

Mr. JARRETT. To the best of my knowledge, there has not been a problem. That particular provision was something that was being insisted upon by some in a previous House version of reauthorization. From our perspective, the criteria does not change. The Secretary could not certify a State that was not finished with its AML work any more than we would allow a State to certify before they finished that job. So at best, that provision would allow us to keep

the paperwork current with the program. The reality is that the funding is not tied into certification.

Senator BINGAMAN. Mr. Buckner, could you just again provide to the committee anything, any analysis that you have of the two bills as they relate to the provisions dealing with financial problems in the Combined Benefit Fund? I am just unclear in my own mind as to which of the two bills is most favorable from your perspective or does what you think ought to be done.

Mr. BUCKNER. Well, the bill that the United Mine Workers believes that the Senate ought to consider is a bill that has gotten strong bipartisan support in the House, and we hope that very shortly there will be a bill introduced in the Senate, a companion bill, H.R. 3796, the Cubin-Rahall approach. It has garnered support from the three largest coal-producing States, Wyoming, West Virginia, and Kentucky. Virtually every House member has signed onto that bill.

The problem with the administration bill is that—I mentioned, Senator, that there had been several court decisions that have undermined the financial condition of the fund. One of those was a decision that is called the NCA decision which essentially knocked down the amount of premium that the Social Security Administration had set originally when the Coal Act was passed that the assigned operators have to pay, knocked it down by about 10 percent in 1995.

In addition, we have got an escalator clause that does not really truly reflect the increase in cost at the funds. It measures the medical component of the CPI. So while it may capture the inflation of a procedure, it does not reflect the reality of a closed, elderly population requiring increased utilization of services.

So with the combination of the court decision that knocked down the amount that the contributing operators had to pay and an escalator that does not truly reflect the true costs, each year we are falling further and further behind.

The administration proposal carries forward the provision of current law which said that the interest money is only to be used to pay for the cost of orphan beneficiaries. The Cubin-Rahall approach opens up that money to cure deficits, which is what Congress has done three times in the past 5 years. So we believe that the administration bill and the Thomas bill do not adequately address the future needs that are going to arise.

We have also got problems, Senator, with a growing burden from bankrupt companies in the steel industry, particularly thousands of beneficiaries that, when Congress passed the law, were paid for by the steel companies and are no longer being paid for by Bethlehem, LTV, Kaiser Steel, and others. We do not think that the Congress anticipated that type of burden. Essentially what we have got are greater needs being placed on the fund, more employers being drawn out of the fund in terms of contributions. So the financing mechanisms that Congress set up in 1992 are taking heavy weight and are about to collapse And we do not think the administration proposal will cure that. We do think the Cubin-Rahall approach will.

Senator BINGAMAN. Thank you very much.

Thank you, Mr. Chairman.

Senator THOMAS. Just very briefly. What do the steel companies have to do with the coal miners?

Mr. BUCKNER. Most of the old-line steel companies, Senator, were integrated steel producers——

Senator THOMAS. I understand but they are not coal miners.

Mr. BUCKNER. No. They were coal miners. They produced the coal——

Senator THOMAS. These guys were not coal miners.

Mr. BUCKNER. No, no. They produced coal in coal mines——

Senator THOMAS. I am talking about the people.

Mr. BUCKNER. Yes.

Senator THOMAS. You keep saying that they are getting to be 90 years old. When does this expire?

Mr. BUCKNER. Well, it will expire when the last beneficiary dies.

Senator THOMAS. When is that?

Mr. BUCKNER. I do not know what——

Senator THOMAS. I mean, roughly. What are you talking about? You tried to do something differently in 1998 I believe to extend it further.

Mr. BUCKNER. In 1998? I am not sure what you are talking about.

Senator THOMAS. Well, I guess what I am saying in general terms, number one, is it confined to coal miners? And number two, is there any end to it, or will you continue to find companies that have to be subsidized?

Mr. BUCKNER. Well, the only people who are in there are people who worked in the coal industry under the National Bituminous Coal Wage Agreement. The steel companies employed coal miners in their coal mines, and under the Coal Act, they were responsible for providing those benefits. They have gone bankrupt because of the collapse of the steel industry, and under the law, the fund has the responsibility to pick those up.

I just want to raise the issue that I do not think Congress anticipated in 1992 that such companies as Bethlehem Steel, which were once considered your blue chip stocks, would not be around in 2004.

Senator THOMAS. Well, thank you, gentlemen.

I have a letter here of Kennecott Energy I would like to put in the record.

I want to thank you for being here. I think all of us agree we need to go forward. We need to find a way to continue with the reclamation project. We need to continue to be able to have fairness in the taxation area. I think we need to continue to seek to ensure that the purpose for these funds is being utilized and that the funds are actually there. So we will continue to work together on it.

Some of the members who were not here may have some written questions for you in the next 24 hours or so, and we will leave the record open for that.

So thank you again for being here. You were a very good panel, and we appreciate it.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, April 30, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are responses prepared by the Office of Surface Mining Reclamation and Enforcement to questions submitted following the March 11, 2004, hearing on S. 2049, to amend the Surface Mining Control and Reclamation Act of 1977 to reauthorize collection of reclamation fees, revise the abandoned mine reclamation program, promote remining, authorize the Office of Surface Mining to collect the black lung excise tax, and make sundry other changes; and S. 2086, to amend the Surface Mining Control and Reclamation Act of 1977 to improve the reclamation of abandoned mines.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosure]

RESPONSES TO QUESTIONS FROM SENATOR THOMAS

Question 1. In non-certified states, what amount has been spent on non-coal reclamation projects?

Answer. As of September 30, 2003, non-certified States and Tribes have received $2.6 billion in grants from the AML fund. Of that amount, $33 million (1.3 percent) went for noncoal reclamation projects.

Question 2. What types of projects does that include?

Answer. Vertical openings accounted for 58 percent ($19.0 million) and portals accounted for 30 percent ($9.9 million) of the non-coal reclamation projects approved in non-certified States and Tribes through September 30, 2003. Most of this reclamation was done under section 409 of SMCRA, which authorizes expenditure of AML funds for reclamation of voids, open and abandoned tunnels, shafts, and entryways resulting from any previous non-coal mining operation if the surface impacts of those operations constitute an extreme danger to public health, safety, or property. A complete summary is presented in the table below.

NON-CERTIFIED PROGRAM STATES AND TRIBES AND TENN.—NON-COAL, ALL PRIORITIES, ALL PROGRAM TYPES—30 SEP 03

	Completed	
	Amount	% of total
Vertical Openings	$19,007,038	57.61%
Portals	9,870,647	29.92%
Subsidence	2,092,313	6.34%
Dangerous Piles & Embankments	522,344	1.58%

NON-CERTIFIED PROGRAM STATES AND TRIBES AND TENN.—NON-COAL, ALL PRIORITIES, ALL PROGRAM TYPES—30 SEP 03—Continued

	Completed	
	Amount	% of total
Dangerous Highwalls	449,409	1.36%
Hazardous Equipment & Facilities	394,809	1.20%
Highwall	326,034	0.99%
Pits	150,689	0.46%
Spoil	85,339	0.26%
Gobs	78,250	0.24%
Dangerous slides	7,582	0.02%
Polluted Water: Agr. & Indust.	5,000	0.02%
Clogged Stream Lands	2,500	0.01%
Total	$32,991,954	100%

Source: AMLIS

Question 3. How much has been spent on non-coal reclamation for P3, P4, and P5 projects in the non-certified states?

Answer. P3, P4, and P5 projects account for $640,000 (1.9 percent) of the $33 million spent on noncoal projects in the non-certified States and tribes as of September 30, 2003.

Question 4. There is an estimated $3 billion worth of P1 and P2 priority needs in the country and there is an un-appropriated balance of $1.56 billion in the AML Trust Fund. I have also been told it could take between 15 and 20 years to address these needs. How quickly could the needs be addressed if the Trust Fund was released to the states?

Answer. Unless Congress reauthorizes the reclamation fee in a manner that addresses the allocation issue, many P1 and P2 problems may never be addressed. The AML inventory currently contains $3 billion worth of unreclaimed P1 and P2 health and safety problems, a figure that does not include administrative costs. Of the $1.56 billion unappropriated balance in the AML fund, $532 million is allocated to certified States and Tribes—those States and Tribes that have completed their coal-related reclamation. In addition, $302 million is allocated to the Rural Abandoned Mine Program, which, when it was active, generally focused on lower priority sites. That leaves less than $0.8 billion available to fund grants for coal-related reclamation, run the Federal and emergency reclamation program, and fund other authorized uses of the AML fund. Therefore, release of the $1.56 billion unappropriated balance in the AML fund would result in reclamation of only a fraction of existing P1 and P2 sites. The number of problems that could be addressed and the time it would take to complete those projects would depend if Congress releases the balance of the fund to target States and Tribes with existing P1 and P2 problems. However, even under the most optimistic scenario, a majority of existing P1 and P2 sites would remain unreclaimed should Congress merely release the unappropriated balance without extending fee collections.

Question 5. You testified that the Office of Surface Mining (OSM) has the opportunity to review the Combined Benefit Fund (CBF) books. Do you conduct a financial audit, or receive an audit, of the CBF on an annual basis?

Answer. The United Mine Workers of America Combined Benefit Fund (CBF) is audited annually by the accounting firm of KPMG LLP. OSM typically receives a copy of the financial statements and related audit opinion. However, OSM has no oversight over how and to whom CBF awards claims. According to the CBF, the final audited report for 2003 is expected within 30 days.

After conducting an audit of the funds transferred to the CBF from 1996 to 2000, the inspector General for the Department of the Interior generally found that the amounts transferred and the amounts paid for health care benefits were accurate (see Report Number 01-I-187, attached).* The Inspector General also issued a related Advisory Letter (Report Number 01-I-188, attached) that concluded that the CBF may not be able to meet its long-term financial obligations, that the preparation of the transfer bill needed to be simplified, and that administrative costs are an authorized use of transferred funds.

*The report has been retained in committee files.

Question 6. How do (you) determine or verify that the funds transferred from OSM to the CBF are used for authorized purposes.

Answer. The CBF provides OSM with an annual auditor's statement that the CBF's determinations of operators' and related persons' business status reflect reasonable application of the guidelines for such determinations, which the CBF has previously disclosed to OSM. This procedure is set forth in the current memorandum of understanding between the CBF and OSM. While this is not an audit, it is an independent review using agreed-upon procedures.

Question 7. Should Congress authorize AML fee collections in excess of annual appropriations? If so, why?

Answer. We believe that AML fee collections should closely match annual appropriations from the AML fund, thus making the program revenue-neutral and avoiding placement of any unnecessary costs on customers. We also believe that the program should continue to be self-financed, by the AML fee, and donations that are directed to AML projects. The graduated fee reductions in our bill would accomplish both goals.

RESPONSES TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. S. 2049 makes extensive revisions to section 411 of SMCRA. Does this affect the ability of a State or tribe to use AML funds for noncoal reclamation work? Do you interpret any provisions of S. 2049, S. 2086, or H.R. 3796 (Cubin-Rahall) as affecting a State or Tribe's ability to use AML funds for noncoal reclamation work?

Answer. SMCRA contains two provisions (sections 409 and 411) authorizing use of AML funds for noncoal reclamation. All bills would continue to allow non-certified States and tribes to use AML funds under section 409 to reclaim abandoned noncoal sites that could endanger life or property, that constitute a hazard to public health or safety, or that degrade the environment, provided that the sites also meet the criteria for a Priority 1 problem site under section 403(a)(1) of SMCRA.

Section 411 of SMCRA currently provides that certified States and tribes (those that have completed all coal-related reclamation) are eligible to receive AML grants for noncoal reclamation, using their State-share allocation. S. 2086 (Thomas), H.R. 3796 (Cubin-Rahall), S. 2208 (Rockefeller-Bond-Bunning), and S. 2211 (Rockefeller) would retain this provision, while S. 2049 (Specter) would eliminate it. However, S. 2049 also would authorize distribution of the unappropriated balance in existing State-share accounts to certified States and tribes over the next ten years. States and Tribes would be free to use those distributions for any purpose that they deem appropriate, including any type of noncoal reclamation, with the only restriction being a requirement to address any coalrelated Priority 1 or 2 problems that arise during those years. Therefore, certified States and tribes would have greater latitude in conducting noncoal reclamation under S. 2049 than they would have under grants awarded under existing section 411.

Question 2. What is the scope and extent of abandoned hardrock mine sites nationwide? Please provide estimates on a state-by-state basis. Please also provide such information with respect to the reservation lands of Tribes that have AML programs.

Answer. We do not maintain an inventory of abandoned hardrock mines. However, the chart below shows data that states have entered into the inventory for non-coal sites. These data are in no way comprehensive—they represent only a fraction of non-coal reclamation activities and needs. OSM does not have a database reflecting the universe of non-coal sites that have been reclaimed or that are in need of reclamation. States and tribes are under no obligation to maintain an inventory of non-coal sites, nor are they required to report non-coal reclamation.

NONCOAL RECLAMATION PROJECTS IN NATIONAL ABANDONED MINE LAND INVENTORY SYSTEM AS OF APRIL 13, 2004

[In millions of dollars]

State/tribe	Unfunded projects	Funded projects	Completed projects	Total
Alaska	67,500	0	650,697	718,197
Alabama	0	0	94,942	94,942
Arkansas	250,000	0	0	250,000
Colorado	17,685,943	1,741,048	33,944,734	53,269,725
Crow Tribe	0	0	1,169,047	1,169,047
Illinois	65,000	0	1,507,432	1,572,432

NONCOAL RECLAMATION PROJECTS IN NATIONAL ABANDONED MINE LAND INVENTORY SYSTEM AS OF APRIL 13, 2004—Continued

[In millions of dollars]

State/tribe	Unfunded projects	Funded projects	Completed projects	Total
Kansas	650,000	5,000	0	655,500
Missouri	9,601,800	0	191,149	9,792,949
Montana	80,405,692	0	17,875,034	98,280,726
Navajo Nation	10,221	46,945	22,883,547	22,940,713
New Mexico	2,034,700	215,000	2,584,679	4,834,379
Ohio	1,323,200	0	182,048	1,505,248
Texas	19,930,545	3,535,634	17,779,669	41,245,848
Utah	3,175,500	345,033	6,213,413	9,732,946
Wyoming	24,617,707	1,868,030	168,335,687	194,821,424
Totals	159,818,308	7,756,690	273,411,078	440,884,076

Question 3. How do S. 2049, S. 2086, and H.R. 3796 differ in their treatment of Indian tribes under the AML program? How does this differ from existing law?

Answer. Under existing law, Tribes with approved AML reclamation plans have the same status as States with respect to grant awards and the allocation of fees from coal extracted from their lands. For the most part, all the bills now under consideration would adhere to that principle.

In practical terms, the provisions in the bills that are likely to affect the Tribes the most are those concerning the minimum program allocation, which SMCRA currently sets at $2 million per year and Congress has historically funded at $1.5 million per year. Under SMCRA, only those States and Tribes with an approved AML reclamation plan, eligible lands or waters, and unreclaimed Priority 1 or 2 problem sites qualify for the minimum program allocation.

S. 2049 (Specter) and S. 2208 (Rockefeller-Bond-Bunning) would not substantively alter those provisions. However, S. 2086 (Thomas), S. 2211 (Rockefeller), and H.R. 3796 (Cubin-Rahall) would remove the requirement that States and Tribes must have unreclaimed Priority 1 or 2 problem sites to qualify for the minimum program allocation. In addition, they would guarantee an annual grant of $2 million to minimum program States and tribes over and above whatever grant amount they may receive under the historic production formula.

S. 2049 (Specter) would provide for a ten-year payout of the unappropriated balance of the State-share accounts in the AML fund for all certified States and Tribes. Under S. 2086 (Thomas), certified States and Tribes would receive a distribution equal to the unappropriated balance in their State-share accounts in the AML fund, although aggregate distributions to States and Tribes with no land subject to leasing under the Mineral Leasing Act would be capped at $65 million. H.R. 3796 (Cubin-Rahall) and S. 2211 (Rockefeller) would provide similar distributions, but only to certified States with leasable public domain land. Certified Tribes apparently would receive no distributions under those two bills.

Question 4. The Navajo Nation relies on AML funding to undertake important public facilities work pursuant to the Surface Mining Control and Reclamation Act. Does S. 2049, S. 2086, or H.R. 3796 restrict the use of funds for this purpose?

Answer. At present, section 403(a)(4) of SMCRA authorizes the expenditure of AML funds in non-certified States and Tribes for the protection, repair, replacement, construction, or enhancement of public facilities adversely affected by coal mining practices. Section 411(e) of SMCRA authorizes certified States and Tribes to spend AML funds on public facilities adversely affected by any mineral mining and processing practices. That paragraph also authorizes certified States and Tribes to spend AML funds to construct public facilities in communities impacted by coal or other mineral mining and processing practices.

S. 2208 (Rockefeller-Bond-Bunning) would not change these provisions. S. 2086 (Thomas), H.R. 3796 (Cubin-Rahall), and S. 2211 (Rockefeller) would remove section 403(a)(5), which would have the effect of eliminating the authority for non-certified States to spend AML grant funds on public facilities unless that expenditure involves a Priority 1 or 2 problem. S. 2049 (Specter) would eliminate the authority for AML grants to certified States and Tribes under section 411, but it also would authorize distribution, over ten years, of the unappropriated State-share balance for those States and Tribes, which would allow certified States and Tribes to spend those funds on anything that they deemed appropriate, including public facilities.

Question 5. What is the Department's position on Tribes assuming primacy for the regulation of coal mining activities on their lands? Would the Administration support legislation to do so?

Answer. Section 710 of SMCRA directed the Secretary to study the regulation of surface coal mining operations on Indian lands and develop legislation designed to allow Tribes to assume full regulatory authority over the administration and enforcement of the regulation of surface coal mining on Indian lands. The Secretary completed and submitted the required report to Congress in 1984. In 1987, Congress granted authority to the Navajo Nation and the Hopi and Crow tribes to obtain approval of AML reclamation plans, but it took no action on authority for regulatory programs. The Energy Policy Act of 1992 required that OSM make grants to the Navajo Nation and the Hopi, Crow, and Northern Cheyenne tribes to assist the tribes in developing regulatory programs.

In 1995, OSM initiated an effort with the Tribes to develop a consensus legislative package. While the effort has resulted in the development of several draft legislative proposals, the Tribes have not been able to achieve consensus. Therefore, no proposal has been forwarded to Congress. We continue to work with the Tribes to resolve the outstanding issues, and with Congress should any legislation be introduced.

Question 6. Could you please provide an analysis of the differences in how the Senate bills address the issue of coal miner retiree benefits? How does this approach differ from the approach in H.R. 3796?

What are the estimates of the funds that would be available for this purpose on an annual basis under each of the three bills? Please provide a table showing projections for the periods covered by the authorization in each bill.

Answer. The following table summarizes the principal differences in the provisions of the various bills. A more detailed narrative description appears after the table.

	Specter bill (S. 2049)	Thomas bill (S. 2086)	Cubin-Rahall bill (H.R. 3796)	Rockefeller bill (S. 2211)	Rockefeller-Bond-Bunning bill (S. 2208)
Allowable uses of transferred funds.	Health benefits for unassigned beneficiaries in CBF.	Health benefits for unassigned beneficiaries in CBF.	All CBF accounts (to offset any deficit in net assets).	Any shortfall between premium income and expenditures for all CBF premium accounts and 1992 and 1993 UMWA Benefit Plans.	Any shortfall between premium income and expenditures for all CBF premium accounts and 1992 and 1993 UMWA Benefit Plans.
Retains $70 million cap on annual transfer.	No	Yes, with possible exception of transfer of stranded interest.	No	No	No.
Source of transferred funds besides interest earned that fiscal year.	Stranded interest.	Stranded interest.	Stranded interest plus unappropriated balance of RAMP allocation.	Stranded interest (if needed to offset any deficit in the net assets of the CBF) plus unapropriated balance of RAMP allocation.	Stranded interest plus unappropriated balance of RAMP allocation.

Section 402(h) of SMCRA currently requires the annual transfer to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF) of the amount of interest that the Secretary estimates will be earned and paid to the AML fund during that year, not to exceed the amount of projected expenditures for health care

benefits for unassigned beneficiaries under the CBF. There are presently about 17,000 such beneficiaries. The Act requires that the transfer be made at the beginning of each fiscal year. Any adjustments necessary to ensure that the transfers reflect actual expenditures must be made in later years. The total amount transferred for any one year may not exceed $70 million.

S. 2049, the Administration's bill, would remove the $70 million cap on annual transfers and make any interest earned in prior years that has not already been transferred ("stranded interest") available for future transfers. Transfers would remain limited to the amount needed to cover health care benefits for unassigned beneficiaries under the CBF.

S. 2086 would make the stranded interest available for transfer in fiscal year 2006 and future years. Existing section 402(h) of SMCRA would remain unchanged. The bill is not clear on whether transfers of stranded interest are subject to the $70 million cap on annual transfers. Transfers would remain limited to the amount needed to cover health care benefits for unassigned beneficiaries under the CBF.

H.R. 3796 would require transfer of all interest projected to be "earned and paid to the Combined Fund" each fiscal year. We believe that the authors meant to refer to interest earned and paid to the AML fund, not the Combined Fund. If so, H.R. 3796 would remove the $70 million cap on annual transfers. It also would expand the allowable uses of the transfers to include payment of any deficit in the net assets of the CBF, not just expenditures for health care benefits for unassigned beneficiaries. Finally, it would make both the stranded interest and the unappropriated balance of the Rural Abandoned Mine Program (RAMP) allocation (currently approximately $302 million) available for transfer to the CBF, if needed, in FY 2004 and future years.

S. 2211 would require annual transfers of interest equal to the amount by which—

- Projected expenditures from all CBF premium accounts exceed anticipated CBF health benefit premium receipts;
- Projected benefit expenditures under the 1992 UMWA Benefit Plan exceed anticipated premium receipts under that plan (including any security provided to that plan that is available for the provision of benefits); and
- Projected benefit expenditures under the 1993 UMWA Benefit Plan (the multiemployer health benefit plan established after July 20, 1992, by the parties that are the settlors of the 1992 Plan) exceed anticipated income to that plan.

Transfers to the 1992 and 1993 plans would be allowed only to the extent that the Secretary determines that funds would be available after meeting the needs of the CBF.

S. 2211 also makes the unappropriated balance of the RAMP allocation available for transfers to the CBF and the 1992 and 1993 plans, if needed, in FY 2004 and future years. Finally, S. 2211 removes the $70 million cap on annual transfers and makes the stranded interest available for transfer to the CBF if needed to offset any deficit in the net assets of the CBF, beginning with FY 2004.

S. 2208 is substantively identical to S. 2211 with the exception that S. 2208 would make the stranded interest available for transfer to the 1992 and 1993 plans if it is not needed to offset the deficit in the net assets of the CBF.

The following table provides hypothetical estimates of the funds that would be available for transfer to the CBF and (under S. 2208 and S. 2211) the 1992 and 1993 UMWA Benefit Plans, under each of the bills for the fiscal years covered by the authorization in each bill, to the extent that such information is available.

FY	S. 2049 (Specter/Administration)		H.R. 3796 (Cubin/Rahall) S. 2208 (Rockefeller et al.) S. 2211 (Rockefeller)		S. 2086 (Thomas)	
	Interest earnings	Available "Stranded" interest	Interest earnings	Available "Stranded" interest & RAMP balance	Interest earnings (see note	Available "Stranded" interest (see note)
2005	$71,042,550	$86,878,603	$71,042,550	$430,797,118	$71,042,553	N/A
2006	71,408,082	58,700,895	69,285,912	361,294,556	70,971,565	$102,781,236
2007	75,824,828	36,578,326	70,370,511	273,795,703	75,306,637	108,087,873
2008	78,296,430	18,552,626	68,631,855	180,463,705	77,692,675	115,780,548
2009	79,056,179	3,553,675	63,771,775	55,451,086	78,331,421	124,111,969
2010	79,198,050	0	61,463,927	0	78,170,004	132,281,972
2011	79,421,385	0	61,859,927	0	78,21,484	140,503,456
2012	79,980,013	0	62,431,927	0	78,451,229	148,954,685
2013	80,681,596	0	63,135,927	0	78,779,083	157,733,768
2014	81,493,796	0	N/A	N/A	79,209,362	166,943,131
2015	90,390,081	8,896,285	N/A	N/A	0	184,695,307
2016	91,046,472	17,407,370	N/A	N/A	0	192,492,578
2017	91,917,196	26,789,179	N/A	N/A	0	192,492,578
2018	92,992,666	37,246,458	N/A	N/A	0	192,492,578
2019	94,225,997	48,937,068	N/A	N/A	0	192,492,578
	$1,236,975,321	.....	$591,994,311	.....	$766,176,013	

Note: S. 2086 (Thomas) retains the $70 million cap on annual interest transfers, so interest earned above that level would not be available for transfer. Although not clear, it appears that the cap also may apply to transfers of stranded interest. If so, none of the stranded interest would be available for transfer under this bill.

OSM does not have sufficient expense and revenue information from either the 1992 or 1993 plan to evaluate interest earning projections for S. 2211 and S. 2208. Therefore, we have used the net asset deficit as a conservative estimate through FY 2013, which is the last information provided to us by the CBF.

H.R. 3796 directs OSM to pay any deficit in the net assets of the CBF, and both Rockefeller bills (S. 2208 and S. 2211) make the stranded interest available for this purpose. The CBF provided OSM projected net asset deficits through the end of 2012 from a document prepared by an actuary in September 2003. The impact of FY2004 actual transactions is not reflected in these figures. However, preliminary figures indicate that interest payments will be insufficient to cover the deficit in the net assets of the CBF after 4 years in S. 2211 and H.R. 3796

Under S. 2086, annual interest earnings in excess of $70 million would not be available for transfer. Although not completely clear, it appears that the $70 million cap also would apply to transfers of stranded interest. If so, we project that none of the stranded interest would be transferred to the CBF under this bill.

Question 7. Please provide a table showing the amounts transferred historically to the Combined Benefit Fund (CBF) from the AML Fund by year.

Answer. The following table presents the requested data to the nearest dollar.

Fiscal year	Amount transferred to CBF during FY
1996	$47,183,764
1997	31,373,799
1998	32,561,520
1999	81,766,325
2000	108,959,942
2001	181,959,942
2002	90,352,800
2003	89,858,283
Totals	$664,016,375

Question 8. Does the Department interpret existing law as granting the Secretary authority to extend the reclamation fee administratively?

If so, does the Secretary have authority to extend the fee at current levels?

Please attach any written analysis provided by the Solicitor's Office on this issue.

Answer. Section 402(b) of SMCRA currently specifies that, after September 30, 2004, "the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h)." The meaning of this provision is somewhat unambiguous, since section 402(h), the provision referenced in section 402(b), merely requires that interest earned by and paid to the AML fund be transferred to the United Mine Workers of America Combined Benefit Fund for debit against that Fund's unassigned beneficiaries premium account.

While SMCRA provides the Secretary with the authority to establish new fee rates, we have not reached a final decision on what those rates should be or whether SMCRA would allow the transfer of the fees themselves rather than just the interest earned on the Fund.

Question 9. Why do you seek authority for the Secretary to certify completion of coal reclamation in a State? Has certification been a problem? What issue is this meant to address?

Answer. Both current law and the Administration's proposal tie allocation of the historic coal production funds to the number of Priority 1 and Priority 2 coal problems a State or Tribe has. Under current law, certification allows States and tribes more discretion in the use of State-share funds, so there is incentive to certify. Under the Administration's bill, that incentive will not exist because States and Tribes will have depleted the remaining balance in their State-share accounts by the time that they complete reclamation of their coal problems.

Certification has not been an issue to date. Our proposal would simply allow the Administration to keep our records current and accurate. The Administration's proposal does not alter the criteria for certification under the current law. The Secretary would not be able to certify completion of coal problems under our proposal if the State or Tribe could not certify under current law.

Question 10. Do you support elimination of the criteria of threat to the general welfare in prioritizing sites for reclamation? What effect would such a change have in the program? How many sites would be eliminated from the inventory due to this change?

How much less would be expended under the program if this criteria were eliminated?

How would this affect environmental remediation under the program?

How would this affect the remediation of water pollution under the program?

Answer. In developing our legislative proposal, we did not consider P1 and P2 general welfare sites when determining how long to extend the fee or how much money to collect. Instead, we focused exclusively on P1 and P2 health and safety problems. However, the Administration favors keeping general welfare problems in the inventory to allow States and Tribes some flexibility in conducting their programs and determining which sites should be reclaimed. As an alternative, we do not object to reducing general welfare problems to the Priority 3 category.

In practice, States and Tribes have focused on P1 and P2 health and safety problems, not general welfare P2 sites, so the effect of the potential change on the program would be minimal. While there are approximately $3.6 billion worth of P2 general welfare sites on the inventory, none have been addressed, which means that no dollars have been spent to date on reclamation of general welfare problems.

If the change were adopted, eighteen watershed-based, multiple-site problem areas in Pennsylvania would be removed from the inventory.

We anticipate little or no savings if the change were to be adopted. No reclamation grant funds have thus far been expended on general welfare problems. To the degree that these problems are addressed in the future, we anticipate that funding would be provided from either the acid mine drainage set-aside or the Clean Streams program.

The impact of this change would be minimal on both environmental remediation and the remediation of water pollution under the AML reclamation program. We anticipate little impact to environmental remediation because States and Tribes have not and are not addressing general welfare problems through AML reclamation grants, apart from the acid mine drainage set-aside program. States and Tribes would still be able to address acid mine drainage problems through the acid mine drainage treatment set-aside program.

Question 11. Please describe the Clean Streams Program. What impact would the provisions of S. 2049, S. 2086, and H.R. 3796 have on this program?

Answer. The Clean Streams Program began as the Appalachian Clean Streams Initiative, a broad-based program to eliminate acid drainage from abandoned coal mines. Today, the program continues to focus on cleaning up acid mine drainage problems, using a combination of private and government resources. It is an opportunity for a partnership approach to one of the major environmental problems facing the regional ecosystems of the coalfields.

The mission of the Clean Streams Program is to coordinate and facilitate the exchange of information and eliminate duplicative efforts among citizen groups, university researchers, the coal industry, corporations, the environmental community, and local, state, and federal government agencies that are involved in cleaning up streams polluted by acid drainage. Watershed associations, community groups, and recreation associations are working together with funding from government and private sources, including matching and in-kind services. This cooperative approach results in improved efficiency and better leverage in the use of public funds.

Funding for the Clean Streams Program currently comes from the Federal Operations allocation under section 402(g)(3) of SMCRA. Subject to appropriation, funds would still available for this program under all bills currently being considered.

Question 12. I understand that the interest earned on the AML Fund is typically at a low rate, which is disadvantageous when such interest is relied upon to fund the CBF. Does either Senate bill or H.R. 3796 address this issue? If so, how? Has OSM explored opportunities to earn higher interest on the Fund without legislation? Please describe the opportunities and constraints.

Answer. The AML fund has been invested in U.S. Treasury securities since 1992. Until recently, our investment strategy was to maximize liquidity by investing in securities with maturities of 180 days or less. The interest rate on the fund's investments averaged 4.46 percent between 1992 and 2001. This strategy more than met the needs identified by the CBF for unassigned beneficiaries during those years. However, short-term interest rates began dropping at the end of 2001 and today the average rate mirrors the Federal funds rate of 1 percent.

In October 2003, after internal reviews and discussions with stakeholders, we revised our investment strategy to improve yields by purchasing 10-year Treasury notes, which were earning 4.25 percent interest at that time. We had planned to spread purchases of these notes over the course of FY 2004 to take advantage of anticipated interest rate increases. However, when the 10-year interest rate went down in February 2004, we accelerated our purchases. Approximately $1.3 billion of the fund is now invested in long-term Treasury securities with a weighted aver-

age interest rate of 4.17 percent. If short-term interest rates remain at 1 percent for the remainder of 2004, the AML fund should earn $46 million in interest during the current fiscal year. While this strategy does not fully meet CBF needs, earnings are far better than if we had maintained purely a short-term strategy.

At present, section 401(e) of SMCRA requires that the AML fund be invested in public debt securities with maturities suitable for the needs of the fund. S. 2086 (Thomas) and S. 2208 (Rockefeller-Bond-Bunning) would make no changes to this provision.

S. 2049, the Administration bill, would revise section 401(e) to require that the Secretary of the Treasury invest the fund in public debt securities with maturities determined by the Secretary of the Interior and suitable for both the needs of the AML fund and achieving the purposes of the transfers to the CBF, which reflects our current investment strategy to increase the fund's earnings.

S. 2211 (Rockefeller) and H.R. 3796 (Cubin-Rahall) would revise section 401(e) by deleting the requirement that investment securities have maturities suitable for the needs of the AML fund. Instead, they would require that the maturities be suitable for achieving the purposes of the transfers to the CBF (in the case of H.R. 3796) or all UMWA health benefit plans (in the case of S. 2211).

Question 13. Please provide for the record your projections of annual payments to each State and Tribe under: (1) S. 2049; (2) S. 2086; (3) H.R. 3796; and (4) current law. Please include all payments (including State Share balance and ongoing payments).

Answer. Annual payments under these proposals will change over time. The following table shows projected AML grant fund distributions to States and Tribes in FY 2009, the fifth year of operation, which is likely to be a relatively "normal" year in most plans if appropriation levels remain stable. All amounts are shown in millions of dollars. For additional information, see the attached tables showing 25-year funding projections for each proposal.*

State/tribe	S. 2049 (Administration proposal)	S. 2086 (Thomas)	H.R. 3796 & S. 2211 (Cubin-Rahall, Rockefeller)	S. 2208 (Rockefeller-Bond-Bunning)	Current law—if fee is not renewed	FY 2004 and forward if fee is renewed
Alabama	4.2	3.6	3.6	2.9	2.3	2.9
Alaska	2.0	2.0	2.0	1.5	0.3	1.5
Arkansas	2.0	2.0	2.0	1.5	0.0	1.5
Colorado	2.5	3.9	3.6	2.6	3.2	2.6
Illinois	0.0	9.1	9.2	8.3	4.0	8.3
Indiana	3.9	7.2	6.8	5.0	5.6	5.1
Iowa	2.0	2.0	2.0	1.5	0.0	1.5
Kansas	2.0	2.0	2.0	1.5	0.1	1.5
Kentucky	15.7	21.7	20.7	15.3	17.0	15.3
Louisiana	0.1	2.0	2.0	0.1	0.2	0.1
Maryland	2.0	2.0	2.0	1.5	0.5	1.5
Missouri	2.0	2.0	2.0	1.5	0.1	1.5
Montana	4.7	[1] 4.8	[1] 4.8	3.4	6.2	3.4
New Mexico	2.2	3.0	2.8	1.8	2.9	1.8
North Dakota	2.0	2.0	2.0	1.5	1.6	1.5
Ohio	9.7	6.6	6.5	5.5	3.3	5.5
Oklahoma	2.0	2.0	2.0	1.5	0.3	1.5
Pennsylvania	51.7	24.8	25.6	24.0	7.9	24
Tennessee	0.0	2.0	2.0	0.0	0.0	0.0
Texas	2.0	2.0	2.3	1.5	2.7	1.5
Utah	2.0	2.3	2.2	1.5	2.0	1.5
Virginia	4.8	5.0	4.9	3.8	3.6	3.8
West Virginia	29.7	26.8	26.2	20.8	17.3	20.8
Wyoming	41.9	[1] 52.7	[1] 52.7	30.3	55.1	30.3
Crow Tribe	0.8	2.0	2.0	0.5	1.0	0.6
Hopi Tribe	0.6	2.0	2.0	0.4	0.7	0.4
Navajo Nation	3.0	2.0	3.6	2.3	4.1	2.3

*The 25-year funding table has been retained in committee files.

State/tribe	S. 2049 (Administration proposal)	S. 2086 (Thomas)	H.R. 3796 & S. 2211 (Cubin-Rahall, Rockefeller)	S. 2208 (Rockefeller-Bond-Bunning)	Current law—if fee is not renewed	FY 2004 and forward if fee is renewed
Total funding	$195.5	$199.5	$199.5	$142.0	$142.0	$142.0

[1] Payment from Mineral Leasing Act revenues.

Question 14. Please provide for the record your projections of annual AML fee collections under: (1) S. 2049; (2) S. 2086; (3) H.R. 3796; and (4) current law.

Answer. The following table provides the requested projections, in millions of dollars, as well as some others for comparison purposes.

Fiscal year	S. 2049 (Administration proposal)	S. 2086 (Thomas)	S. 2208, S. 2211, H.R. 3796 (Rockefeller-Bond-Bunning, Rockefeller, Cubin-Rahall)	Current law	Current law if extended
2005	239	211	225	0	280
2006	246	217	231	0	288
2007	252	224	239	0	297
2008	256	228	243	0	303
2009	263	232	247	0	308
2010	253	237	253	0	316
2011	257	241	257	0	320
2012	260	243	260	0	323
2013	263	245	263	0	326
2014	265	248	265	0	330
2015	260	0	268	0	334
2016	264	0	272	0	339
2017	268	0	276	0	345
2018	272	0	279	0	348
2019	0	0	283	0	354
Totals	3,618	2,326	3,960	0	4,810

Question 15. Please provide for the record an analysis of the States and Tribes' Legislative Concept Paper, dated February 27, 2003 (attached). Please provide projections of annual payments to each State and Tribe under this proposal. Please provide projections of annual AML fee collections under the proposal. What are the Administration's views on the allocation formula under this proposal? What are the Administration's estimates of how long it will take to complete reclamation of Priority 1 and 2 sites under this proposal? Please also provide projections of funds that will be available on an annual basis for transfer to the CBF under this proposal.

Answer. This paper advocates five major changes to SMCRA. It would—

- Renew the AML fee at current rates for 12 years.
- Eliminate the allocation for the Rural Abandoned Mine Program.
- Support a minimum program funding level of $2 million per year.
- Distribute the State-share allocation of fee collections without appropriation.
- Remove the 30 percent cap for using AML grants for water supply projects.

The proposal would continue to allocate 50 percent of collections to a State-share account as does the current law.

The table below presents projected distributions for FY 2005 and FY 2012. Fifty percent of all collections would be distributed to the State or Tribe in which the fees were collected. Thirty percent of collections would be distributed to the non-certified States and Tribes based upon historic coal production. Since grants would be non-

discretionary spending, and collections are projected to increase, grants would increase steadily under this proposal.

The following table provides projections of annual AML fee collections under the proposal, in millions of dollars:

Fiscal year	Projected collections
2005	280
2006	288
2007	297
2008	303
2009	308
2010	316
2011	320
2012	323
2013	326
2014	330
2015	334
2016	339
Total	3,764

We do not support the allocation formula this proposal sets out. Other than changing the RAMP allocation to a historic coal production allocation, it makes no change to the allocation formula currently in SMCRA.

We have come to the conclusion that, while we have made significant achievements in reclaiming mine sites abandoned prior to the enactment of SMCRA, various factors have changed considerably since 1977, creating a fundamental imbalance in the way AML funds are allocated.

In fact, we are convinced that the ability of the AML program to meet its primary objective of abating AML problems on a priority basis is being hindered by this allocation formula. It results in a progressive distribution of resources away from the most serious AML problems.

Generally, there is a strong correlation between a State's or Tribe's historic production and the magnitude of its AML problem. Therefore, grant dollars from the historic production account are distributed to each in an amount proportional to the magnitude of its AML problem. However, the majority of the grant dollars are distributed to the States and Tribes on the basis of current production. There is no relationship between the current production State-share portion of the grant and the magnitude of the AML problem in that State or Tribe. Consequently, there is no parity among the states and tribes in terms of the rate of AML reclamation.

State/tribe	FY 2005 Distribution	FY 2012 Distribution
Alabama	4.3	4.5
Alaska	2.0	2.0
arkansas	2.0	2.0
Colorado	4.7	5.2
Illinois	12.6	13.0
Indiana	8.6	9.4
Iowa	2.0	2.0
Kansas	2.0	2.0
Kentucky	24.2	26.4
Louisiana	0.2	0.2
Maryland	2.0	2.0
Missouri	2.0	2.0
Montana	5.6	6.5
New Mexico	3.1	3.5
North Dakota	2.0	2.1
Ohio	8.7	9.1
Oklahoma	2.0	2.0
Pennsylvania	37.5	38.2
Texas	2.2	2.6
Utah	2.6	2.9
Virginia	5.8	6.3
West Virginia	34.7	37.2

State/tribe	FY 2005 Distribution	FY 2012 Distribution
Wyoming	62.1	71.6
Crow Tribe	1.0	1.1
Hopi Tribe	0.7	0.7
Naajo Nation	3.4	3.9
Totals	238.0	258.4

Because the proposal does not change the 50 percent State-share allocation of collections based upon current production, it does not change the diversion of funds away from the reclamation of high-priority coal problems. We estimate that it would take approximately 40 years on average to finish the job under this proposal. In some instances, it would take over a century to complete all the reclamation.

The following table provides projections of funds that would be available on an annual basis for transfer to the CBF under this proposal:

Fiscal year	Earnings ($)	Amount transferred to CBF ($)*
2004	44,737,497	70,000,000
2005	69,228,105	70,000,000
2006	69,350,185	70,000,000
2007	74,279,544	70,000,000
2008	77,353,315	70,000,000
2009	78,669,152	70,000,000
2010	79,050,595	70,000,000
2011	79,448,821	70,000,000
2012	79,864,570	70,000,000
2013	80,298,611	70,000,000
2014	80,751,749	70,000,000
Totals	813,032,145	770,000,000

*The proposal could be read as either containing an implied $70,000,000 cap or as requiring the transfer of all interest earned.

Question 16. How many deaths have occurred at unreclaimed mine sites since 1977? Please provide the data by year and location (State or Tribe), if available.

Answer. There is no systematic national accounting of how many people have been hurt or killed at abandoned coal mine sites, so we have to rely on anecdotal information. For example, we know of at least 45 deaths and 19 injuries at abandoned mine sites in the anthracite region of Pennsylvania alone in the past 30 years. Oklahoma has reported 11 deaths in 10 years.

Question 17. What constraints do you think should be placed on the use of AML funds distributed to certified States and Tribes? Is it the Administration's position that these funds should be available for non-mining related purposes? If so, what is the policy rationale?

Answer. As set forth in S. 2049 (Specter), we believe that certified States and Indian tribes should be able to use distributions from the unappropriated balances of their State-share accounts for whatever purposes they see fit, provided that they address any high-priority coal-related AML problems that arise after certification.

Question 18. Under S. 2049, S. 2086, and H.R. 3796, how much funding will be available for the Small Operator's Assistance Program, emergency work, and reclamation work in nonprogram states?

Answer. None of the bills alters the amount of funding available for these programs. Funding is a function of the appropriations process as neither the existing law nor the pending legislation establishes a defined funding level for these programs. For informational purposes, the following table summarizes the funding provided over the past three years, in millions of dollars:

Program	FY 2001	FY 2002	FY 2003
SOAP	1.5	1.5	1.5
State emergency program grants	2.9	8.7	9.7
Federal emergency projects	10.9	10.9	0.0

Program	FY 2001	FY 2002	FY 2003
Federal reclamation projects	2.4	2.4	1.3

Question 19. How much is Tennessee expected to receive under each of the Senate bills and H.R. 3796? How much has been expended in Tennessee annually since OSM took over the Tennessee program? How many sites are on the Tennessee inventory?

Answer. Tennessee does not have an approved State regulatory program under section 503 of SMCRA. Therefore, by law, it is not eligible to receive any of the funds that Congress appropriates for grants to States and Tribes with approved AML reclamation programs. See section 405(c) of SMCRA. S. 2049 (Specter) and S. 2208 (Rockefeller-Bond-Bunning) would not change Tennessee's current status. However, S. 2086 (Thomas), S. 2211 (Rockefeller), and H.R. 3796 (Cubin-Rahall) would require that Tennessee receive the same grant amounts as minimum program States and Tribes under section 402(g)(8) of SMCRA. The Administration is worried that if Tennessee regains eligibility after relinquishing its regulatory program, other States may follow and fail to maintain their regulatory programs. Under SMCRA, one of the major incentives for States to assume primacy for the regulation of surface coal mining operations is the ability to receive AML reclamation grants. This could burden the government with significant additional costs annually if OSM has to operate these regulatory programs.

With respect to how much Tennessee would receive under the various bills, S. 2086, S. 2211, and H.R. 3796 would require annual grants of not less than $2 million. The State would not receive any grants under either the current version of SMCRA or S. 2049.

However, we would continue to reclaim high-priority sites in Tennessee with money appropriated for Federal reclamation operations. The following table summarizes Federal AML reclamation expenditures in Tennessee since the State relinquished primacy and a full Federal regulatory program took effect on October 1, 1984. Tennessee had 291 sites in the AML Inventory as of September 30, 2003, of which 139 have yet to be reclaimed at an estimated cost of $34 million.

Fiscal year	TN Emergency Projects Completed ($)	TN High-Priority Projects Completed ($)	Totals ($)
2003	25,044	988,390	1,013,434
2002	122,046	1,134,378	1,256,424
2001	10,620	2,229,553	2,240,173
2000	280,169	1,023,538	1,303,707
1999	1,216	927,349	928,565
1998	108,209	1,450,000	1,558,209
1997	315,330	1,469,043	1,784,373
1996	0	919,000	919,000
1995	0	674,000	674,000
1994	81,938	995,825	1,077,763
1993	283,127	520,000	803,127
1992	19,545	675,000	694,545
1991	291,535	579,861	871,396
1990	0	555,660	555,660
1989	84,934	325,545	410,479
1988	610,924	0	610,924
1987	633,664	2,046,000	2,679,664
1986	71,714	1,557,827	1,629,541
1985	0	789,075	789,075
Totals	2,940,015	18,860,044	21,800,059

Question 20. Is there a requirement that the AML Fund balance be paid to the States and Tribes if the fee is not reauthorized?

Answer. The AML fund balance would remain subject to appropriations and appropriations would, unless otherwise directed, be allocated according to the existing formula.

Question 21. Will certified States be required to maintain AML programs? If not, how will certified States address any new AML problems, as required by section 401(d)(2)(D) in S. 2049?

Answer. Under the Administration's proposal, S. 2049, certified States and tribes would not be required to maintain AML programs, as they are no longer eligible for AML grants. However, we anticipate that most certified States and tribes will maintain those programs in some form to administer the payouts from the unappropriated balances in their State-share accounts. In the event that a State disbands its program, another agency would need to be designated as the grant recipient in charge of compliance with all grant-related requirements and procedures. Other State agencies with construction expertise, such as State emergency management agencies, should be capable of handling any health or safety coal-related AML problems that arise.

Question 22. At the hearing, some questions were raised regarding what procedures are in place to govern the transfer of AML interest to the CBF. Are these procedures set forth in a memorandum of understanding or similar document? If so, please provide a copy. Does OSM receive reports on the use of the AML funds transferred to the CBF?

Answer. A memorandum of understanding between OSM and the United Mine Workers of America Combined Benefit Fund, which was signed by both parties on October 12, 2000, establishes the procedures governing the transfer of funds. A copy is attached.* We do not receive reports on the use of transferred funds, but we do receive copies of audited financial statements and the results of an independent review of the CBF procedures in determining the amount transferred.

Question 23. What is the projected annual revenue impact resulting from the decrease in the AML fee as proposed in: (1) S. 2049; (2) S. 2086; and H.R. 3796? Please provide a table displaying annual projections for the periods covered by the authorizations in each bill.

Answer. The following table summarizes the revenue impacts of the bills under consideration:

Fiscal year	Estimated fee collection receipts (Millions of $)				Reduction in estimated fee collection receipts compared with current law (Millions of $)		
	S. 2049	S. 2086	S. 2208, S. 2211, H.R. 3796	Current law	S. 2049	S. 2086	S. 2208, S. 2211, H.R. 3796
2005	239	211	225	280	(41)	(69)	(55)
2006	246	217	231	288	(42)	(71)	(57)
2007	252	224	239	297	(45)	(73)	(59)
2008	256	228	243	303	(46)	(75)	(60)
2009	263	232	247	308	(45)	(76)	(61)
2010	253	237	253	316	(63)	(78)	(63)
2011	257	241	257	320	(63)	(79)	(63)
2012	260	243	260	323	(63)	(80)	(63)
2013	263	245	263	326	(64)	(81)	(64)
2014	265	248	265	330	(64)	(82)	(64)
2015	260	251	268	334	(74)	(83)	(66)
2016	264	254	272	339	(74)	(84)	(67)
2017	268	259	276	345	(76)	(86)	(68)
2018	272	262	279	348	(77)	(87)	(69)
Totals	3,618	3,352	3,577	4,456	(838)	(1,104)	(879)

Question 24. How do S. 2049, S. 2086, and H.R. 3796 differ in their treatment of the balance in the Rural Abandoned Mine Program (RAMP)?

Answer. The unappropriated balance of the RAMP allocation within the AML fund is slightly in excess of $300 million. S. 2049, the Administration's bill, would return the entire balance to the fund without allocation, meaning that it would be available for appropriation for any authorized use of the AML fund. Our expectation is that those funds would be used for future grants for reclamation of high-priority coal-related AML problems.

S. 2086 would make up to $65 million of the unappropriated balance (excluding interest) available for payments to certified States and Tribes that do not have lands available for leasing under the Mineral Leasing Act. Those payments, which would be proportional to and in lieu of payment of the unappropriated balance of

*Retained in committee files.

their State-share allocations, would not be subject to appropriation and would begin in fiscal year 2005. The expenditure of those funds would not be subject to any SMCRA restrictions. S. 2086 does not specify what would happen to the remaining funds in the RAMP allocation.

Under H.R. 3796, the entire unappropriated balance of the RAMP allocation (excluding interest) would be available for transfer, beginning in fiscal year 2004, to the UMWA Combined Benefit Fund (CBF) to offset the amount of any deficit in the net assets of the CBF.

S. 2211 would make the entire unappropriated balance of the RAMP allocation (excluding interest) available for transfer, beginning in fiscal year 2004, to the CBF and the 1992 and 1993 UMWA benefit plans, if needed to cover premium or income shortfalls in those plans.

S. 2208 would make the entire unappropriated balance of the RAMP allocation (including interest) available for transfer to the CBF and the 1992 and 1993 UMWA benefit plans, if needed to cover premium or income shortfalls in those plans.

RESPONSES TO QUESTIONS FROM SENATOR DOMENICI

Question 1. Why does the Administration/OSM feel it is necessary for the Secretary to unilaterally certify states/tribes as having completed their coal priorities? Under what circumstances would the Secretary deem it necessary to certify a state? What has taken place to necessitate a change from the current language regarding certification?

Answer. Both current law and the Administration's proposal tie allocation of the historic coal production component of the AML fund to the number of Priority 1 and Priority 2 coal problems within a State or Tribe. Under current law, certification allows States and tribes more discretion in the use of State-share funds, so there is incentive to certify. Under the Administration's bill, that incentive would not exist because State-share allocations will have been depleted by the time that States and Tribes complete reclamation of their coal problems and become eligible to certify.

The proposal to allow the Secretary to certify States and tribes would simply enable us to keep our records current and accurate by certifying all States and Tribes that complete the reclamation of coal-related AML problems. The Administration's proposal would not change the current criteria for certification. The Secretary would not be able to certify completion of coal problems under our proposal if the State or Tribe could not certify under current law.

Question 2. Is there a requirement and a mechanism for the return of Trust Fund balances to the states/tribes if the AML fee is not authorized?

Answer. No. The Trust Fund balances are subject to appropriations. If Congress does not reauthorize the reclamation fee in a manner that addresses the allocation issue, some Priority 1 (P1) and Priority 2 (P2) problems may never be addressed. The AML inventory currently contains $3 billion worth of unreclaimed P1 and P2 health and safety problems, a figure that does not include administrative costs. Of the $1.56 billion unappropriated balance in the AML fund, $532 million is allocated to certified States and Tribes—those States and Tribes that have completed their coal-related reclamation. In addition, $302 million is allocated to the Rural Abandoned Mine Program, which, when it was active, generally focused on lower priority sites. That leaves less than $0.8 billion available to fund grants for coal-related reclamation, run the Federal and emergency reclamation program, and fund other authorized uses of the AML fund. Therefore, release of the $1.56 billion unappropriated balance in the AML fund would result in reclamation of only a fraction of existing P1 and P2 sites. The number of problems that could be addressed and the time it would take to complete those projects would depend upon the manner in which Congress releases the balance of the fund to States and Tribes. However, even under the most optimistic scenario, a majority of existing P1 and P2 sites would remain unreclaimed should Congress merely release the unappropriated balance without extending fee collections.

Question 3. If Trust Fund balances will be returned if the AML fee is not reauthorized, what do certified states/tribes gain from the OSM proposal? In either case, they get only their portion of the Trust Fund. Under the OSM proposal, coal producers in those same states and tribes would continue to pay reclamation fees but no money would be returned to the certified state/tribes. If the fee is not reauthorized, coal producers in those states would save $1.5 billion in fees. How does OSM reconcile this scenario?

Answer. As AML fund balances are subject to appropriation, it is uncertain as to whether Trust fund balances would be returned to certified States and Tribes if the AML fee is not reauthorized. We believe that reclamation of high-priority coal-related AML sites is a national problem that requires a national solution. The Nation

as a whole benefited from the coal extracted in the years before the enactment of SMCRA. Accordingly, we believe it is appropriate for the Nation as a whole to help reclaim the adverse impacts that resulted from that mining. We determined that the best approach would be to strike a balance between the interests of the western states, where the majority of coal is being mined today, while addressing the high priority health and safety needs that currently exist in the east. As a result, we fashioned a proposal that addresses both needs. The Administration's proposal would honor the commitment in SMCRA to dedicate 50 percent of the fees collected before September 30, 2004, to the States and tribes in which the coal was mined. Certified states and tribes would receive their unappropriated State-share balances as of that date over a ten-year period and their citizens would live without the effects of hazardous coal mines in their midst. Our proposal also would remove the requirement that expenditures of those funds comply with section 411 of SMCRA, so certified States and tribes would have considerably more latitude in the use of those funds than they would if the law remained unchanged.

If the fee is not reauthorized, $1.5 billion will not be collected in revenue leaving hazardous mines. Since the coal fee is passed on to coal consumers, we believe that any net savings will be realized by the nation, not any individual state. For example, in the largest producing states, most of the coal is sold to companies in other states.

The Administration's proposal will result in reclamation occurring much faster than under the current allocation formula, thereby addressing the pressing health and safety concerns for millions of Americans who live on or near our Nation's coalfields. Finally, the proposal's graduated fee reductions make the program revenue neutral and have the added benefit of resulting in lower costs to consumers who purchase electricity from producers that burn coal in their plants.

Question 4. Under the Administration's proposal, what happens when the appropriation is not sufficient to cover both the payout to certified states and the historic formula/minimum state payments under 403(b)? What happens to state share funds if a state cannot get them all back before 2014 because of less than anticipated allocations from Congress?

Answer. The Administration is committed to efficient and effective reauthorization and has demonstrated that commitment in its fiscal year 2005 budget request. We believe that the fiscally prudent course is to keep distributions to certified States and Tribes subject to appropriation. If a certified State or Tribe does not receive a full payout of its State-share allocation before 2014, we would seek appropriations in subsequent years to distribute the remaining funds on a prorated basis determined by each State or tribal share remaining to be distributed.

Question 5. Under the Administration proposal, are states required to work on all priority 1 and 2 problems only, or are they able to work on priority 3 features along with the higher priority problems? Can work done by the states still reflect a mix of priorities?

Answer. Under the Administration's proposal, AML grant funds would be distributed based upon historic coal productions, which substantially correlates to the occurrence and severity of unreclaimed health and safety coal-related Priority 1 and 2 problems. However, the Administration's proposal does not limit States and tribes to addressing only those problems. We believe States and Tribes should have flexibility in conducting their programs. States and Tribes could continue to do a mix of priorities. However, our emphasis is on Priority 1 and 2 health and safety problems, an emphasis that States and Tribes have shared overwhelmingly, as non-certified State and tribes have chosen to address very few lower priority sites to date.

Question 6. There seems to be some disagreement about the scope and priority of abandoned mine problems in each state and nationwide. How do the States and OSM update their inventories, and how do we make sure that problems are prioritized consistently from state to state?

Answer. We agree that the quality of the inventories varies from state to state. Nevertheless, we are confident that the overall inventory is a good national indicator of the scope and magnitude of the problem left to address. In general, we believe that all states are making a good-faith effort to rank and evaluate the problems based upon their individual State or Tribal plan as approved by the Secretary, which require use of the priorities in SMCRA.

Because the inventories do differ, we do not view them as a sufficient basis for determining the level of grant funding and the overall allocation of collected funds. We have instead chosen historic coal production as a basis for grant funding allocations because historic coal production is an objective, statistically-based method that will direct funds to the remaining problems with a high degree of accuracy, equity, and proportionality.

States and Tribes update their inventories as necessary by direct input to the OSM database. While OSM does not approve these updates, we do review the inventory for anomalies. Moreover, we review inventory updates whenever we perceive a need in oversight.

Question 7. In 1992, Congress ordered you to transfer the interest from the AML fund to the UMWA's Combined Benefit Fund, to cover health care premiums for miners whose employers have gone out of business. If the interest is insufficient to make up the CBF's shortfall, the Secretary of the Interior is ordered to make up the difference, up to $70 million.

The law is unclear regarding how the amount due the CBF is to be determined and paid, other than that the Trustees of the CBF will "estimate" how much is to "be debited against the unassigned beneficiaries premium account." Exactly how does this work? How do you determine how much to send the CBF?

Answer. Our Memorandum of Understanding with the CBF, as signed by both parties on October 12, 2000, calls for the CBF to provide an estimate of the per beneficiary expenses for unassigned beneficiaries for the plan year, which coincides with the Federal fiscal year. This is based on an actuarial study commissioned by the CBF.

The CBF also provides a listing of the unassigned beneficiaries as of September 1st each year. The Social Security Administration provides the base unassigned beneficiaries for this list each year. The CBF then makes adjustments based on "out of business" status not recognized by the Social Security Administration. An audit firm validates these changes based on procedures agreed upon by OSM and the CBF. The audit firm provides OSM a report of its findings, if any.

CBF takes these adjusted unassigned beneficiaries multiplied by the estimated actuarial costs to arrive at their estimate. Concurrently, OSM estimates the amount of interest it expects to earn on investment of the AML fund. OSM then transfers the lesser of the CBF estimate of expenses or the OSM-estimated interest.

The Memorandum of Understanding also provides for adjustments to actual costs and earnings by both CBF and OSM after the end of the plan year. In its billing, the CBF makes these actual cost adjustments and other prior-period adjustments based on court rulings or new bankruptcy information, subject to the guidelines listed above. Typically, an annual CBF billing covers both positive and negative adjustments for a number of prior plan years.

Question 8. Do you have the authority to independently evaluate the amount that the CBF estimates should be transferred or oversee how it is expended? I'd appreciate it if you could describe to us how the Trustees justify the expenditures for the unassigned beneficiaries. What means do they use to ensure—and reassure the government—that the money is going to those for who it is intended?

Answer. The Memorandum of Understanding discussed in the response to Question 7 provides the Federal Government the right to audit all records pertaining to the transfer of funds to the CBF. This includes records involving the determination of eligible beneficiaries, the estimate of expenditures, the receipt and use of Federal funds, the determination of actual costs, including administrative costs within the context of reasonable and sound accounting practices, and the computation of subsequent adjustments. We receive copies of audited financial statements and the results of an independent review of the CBF procedures in determining the amount transferred. However, we do not receive reports on the use of transferred funds.

In 1999-2000, the Inspector General audited the funds transferred to CBF from 1996 to 2000 (Report Number 01-I-187, report attached).* The IG reported that, "in general the transferred amounts were accurate." The IG also issued a related Advisory Letter (Report Number 01-1-188, report attached) that addressed the overall financial condition of the CBF, the efficiency of the fund transfer process, and the appropriateness of charging administrative costs. The Advisory Letter concluded that the CBF may not be able to meet its long-term financial obligations, that the preparation of the transfer bill needed to be simplified, and that administrative costs are an authorized charge to the transfer bill. OSM will request a follow-up audit in fiscal year 2005. Additionally, the CBF has engaged a public accounting firm to perform a special review to verify the unassigned beneficiary listing on an annual basis. OSM receives the results of this review annually.

Question. It is my understanding that over $6 billion has been collected in AML fees from coal operators since the program's inception in 1977 but that only $1.5 billion has been expended addressing priority environmental and safety projects.

Missouri gets nearly 90% of its coal from surface mined coal in Wyoming and electric ratepayers, both industrial and residential, in Mo. are incurring the costs for the program. Senator Thomas has proposed a greater reduction in the AML fee for

*The report has been retained in committee files.

surface mined coal than proposed by the Administration. Will the Administration support Sen. Thomas's proposal that will help ratepayers in Missouri and the other states consuming surface mined coal?

Answer. We agree that the cost of the AML fee is passed along. However, the cost passed on to individual consumers is extremely small. The Administration supports a fee reduction at a level that would keep collections on pace with expenditures. We believe that the fee reductions in Senator Thomas' proposal would not keep pace with the projected cleanup needs in our Nation's coalfields.

RESPONSES TO QUESTIONS FROM SENATOR BUNNING

Question 1. Mr. Jarrett and Mr. Hohman, state allocations for reclamation have traditionally been based on historic coal production. Kentucky has the third worst reclamation problems in the nation. However, it receives less money than other states such as Ohio and Virginia who have less reclamation problems. Why is the state allocation based on historic coal production instead of based on reclamation needs? What difficulties do you see in changing the allocation to focus on reclamation need instead of historic production?

Answer. We agree that future allocations for reclamation of AML sites should be based upon need. That is exactly what the Administration's proposal seeks to accomplish. Our analysis shows that the most objective method of allocating funds to high-priority sites is a formula based on historic production, because there is a substantial correlation between historic production and the occurrence of high-priority problem sites. We are certainly willing to work with you to improve our proposal. However, we also believe that it is important to honor the promise in SMCRA that 50 percent of the fees collected before September 30, 2004, be allocated to the States and tribes from which the coal was produced.

In our extensive analysis of the AML program and the many issues surrounding the program, we examined various scenarios that would best enable us to direct the funds to the areas where the problems exist. There are two mechanisms for doing this: using historic coal production or an inventory. We chose to use historic coal production because it is an objective measure that substantially correlates with the magnitude of the coal-related high priority health and safety problems. Indeed, we found a very close correlation between the occurrence of Priority 1 and 2 problems (as shown on the states' inventory) and historic coal production (coal mined before 1977). Neither Virginia nor Ohio receive more in annual grants than Kentucky. In descending order, the largest state inventories of Priority 1 and 2 coal related health and safety problems are those in Pennsylvania ($1 billion), West Virginia ($735 million), and Kentucky ($323 million). These three states make up 69 percent of the total inventory as reported by the states and tribes.

The states with the greatest historic coal production are Pennsylvania (34.2 percent), West Virginia (19.7 percent), Illinois (10.6 percent), and Kentucky (10.4 percent). Under the Administration's proposal, Kentucky and Illinois would receive $15.7 million in grants, the third- and fourth-largest grants. Illinois, where historic coal production came mostly from underground mining, has a relative small inventory, and would complete its coal reclamation in a few years. Ohio, which ranks fifth in historic coal production and has the sixth-largest inventory would receive a grant of $9.7 million (fifth-largest), and Virginia, which ranks sixth in historic coal production and has the fifth-largest inventory, would receive a grant of $4.7 million (sixth largest).

To change the allocation formula, first, one must recognize that AML problems are national and require a national solution. Funds collected within any state should be used to clean up AML problems in any state where they exist. Second, states for which the Stateshare allocation is the major component of their grants will avoid funding decreases and receive grant increases in future years under the Administration's proposal.

Question 4. Mr. Jarrett, does Kentucky receive the same total amount of funding that it will receive under the Thomas bill?

Answer. Under the administration's bill, Kentucky will receive $391 million over 22 years, which is sufficient to address the current construction costs of all recorded problems in the State's AML inventory as well as costs such as project design and planning. Under Senator Thomas's bill, Kentucky would receive an additional $69 million in the same 22-year period, which is above the costs of current AML problems. However, at that point, other states would still have over $600 million in health and safety coal-related problems to reclaim. Nevertheless, under Senator Thomas' bill, Kentucky would continue to receive $16.5 million in State-share distributions each year for another 3 years and longer, if the fee is extended for the

length of time needed to generate sufficient funds to reclaim all health and safety sites in other states.

The following table shows possible Kentucky funding for the next 25 years under each bill, with estimated total AML grant distributions in millions of dollars. For comparison, Kentucky's current inventory of Priority 1 and 2 coal reclamation projects is $323.5 million, which, with the addition of 20 percent for design, engineering, inspection, etc., would constitute a total program need of $388.2 million.

Bill number	Sponsor	Estimated total funding for Kentucky
S. 2049, H.R. 3778	Administration bill (Specter)	$391.7 million
H.R. 3796	Cubin-Rahall bill	493.4 million
S. 2086	Thomas bill	510.3 million
S. 2211	Rockefeller bill	493.4 million
S. 2208	Rockefeller-Bond-Bunning bill	382.5 million
	No change to current law	139.5 million

Kentucky AML inventory (plus 20% for overhead): $388.2 million

Question 7. Mr. Jarrett and Mr. Buckner, the Administration recently announced a $190 million Medicare prescription drug demonstration program for the Combined Health Benefit Fund for coal retirees. The Specter bill proposes to make over $100 million of accumulated reclamation interest available to the combined health benefit fund. Will both of these amounts together be sufficient to meet the obligations of the Combined Benefit Fund?

Answer. Based on available information, we estimate that with the recently announced $190 million Medicare prescription drug demonstration program along with the availability of $100 million of current accumulated "stranded interest" and the increased earnings on the AML fund, there should be sufficient interest available to meet the needs of the unassigned beneficiaries of the Combined Benefit Fund through 2009. We further estimate that from 2015 forward, the interest earned on the fund will be sufficient to meet the needs of the unassigned beneficiaries of the Combined Benefit Fund.

NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS,
March 23, 2004.

Hon. PETE V. DOMENICI,
Chairman, Senate Energy and Natural Resources Committee, Washington, DC.

DEAR CHAIRMAN DOMENICI: Enclosed with this letter are my responses to questions from several members of the Committee following my testimony at the AML Hearing on March 11, 2004. Please contact me if you need further information.

Sincerely,

STEVE HOHMANN,
President.

RESPONSES TO QUESTIONS FROM SENATOR DOMENICI

Question 1. You state that "any adjustment to the current certification process should not inhibit the ability to states and tribes to address high priority non-coal projects. Exactly what are you concerned about, and what should we do or not do?

Answer. The NAAMLP believes that if states and tribes are required to certify completion of coal related problems they should not be precluded from working on high priority non-coal problems with state share funding. Maximum flexibility and discretion should remain with the states and tribes to fund projects, coal or non-coal, within their respective borders.

Question 2. There seems to be some disagreement about the scope and priority of abandoned mine problems in each state and nationwide. How do the States and OSM update their inventories, and how do we make sure that problems are prioritized consistently from state to state?

Answer. There are indeed some challenges associated with how we define the scope and priority of AML problems. For one thing, construction costs used in the inventory are not uniform nationwide. However, the inventory is a good indicator of the general location and distribution of AML problems. The inventory has merit because it documents actual on-ground problems in a particular state. So, we do

know from the inventory that those on-ground problems are legitimate and far exceed the amount of funding currently available to reclaim them.

Discrepancies may exist in the designation of priorities from state to state; however, some degree of standardization is achieved through the inventory forms each state must complete in order to enter a site into the inventory. The forms ask standard questions and depending on the answers, a site is designated a Priority One, Two, or Three.

The real controversy surrounding priorities is over the designation of certain "general welfare" problems as Priority Two health and safety issues. Some parties believe that this practice usurped the Priority system and its intent under Title IV. Those parties advocate an OSM review of the inventory to identify these sites and remove them. This is one of the provisions in the Thomas bill, S. 2086, and the Cubin/Rahall bill, H.R. 3796.

Also, the Thomas bill and the Cubin/Rahall bill attempt to address the prioritization issue in the future by requiring OSM to approve all state and tribal additions to the inventory.

RESPONSES TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. I understand that the National Association of Abandoned Mine Land Programs has developed a Legislative Concept Paper and Proposal for Extension of the Abandoned Mine Land Reclamation Program, dated February 27, 2003. Please provide for the record information describing this proposal and the rationale supporting it.

Answer. I have attached a copy of the Legislation Concept Paper and its supporting rationale.*

Question 2. What process was used to develop the proposal? Does the proposal have the support of the States and Tribes with AML programs?

Answer. The Legislative Concept Paper began as a resolution that the NAAMLP passed at our September 2002 Annual Meeting in Utah. The resolution addressed items relating to reauthorization on which the states and tribes, at that time, had reached a consensus. Through a series of conference calls, the resolution was developed into a concept paper in the months following the annual meeting. Work on the paper was finalized at the NAAMLP Winter Meeting in Texas in February 2003.

The proposal had consensus from the states and tribes at the time it was adopted. Currently, the paper has not been the focus of our group's discussions. Since specific legislation has been introduced our attention has been diverted to addressing those proposals. It is my belief that the concept paper still has broad consensus from our members.

RESPONSES TO QUESTIONS FROM SENATOR BUNNING

Question 1. Mr. Jarrett and Mr. Hohrnann, state allocations for reclamation have traditionally been based on historic coal production. Kentucky has the third worst reclamation problems in the nation. However, it receives less money than other states such as Ohio and Virginia who have less reclamation problems. Why is the state allocation based on historic coal production instead of based on reclamation needs? What difficulties do you see in changing the allocation to focus on reclamation need instead of historic production?

Answer. Currently, Kentucky receives more in reclamation grants than Ohio and Virginia. That's because the current allocation relies on historic production and state share to distribute funds. OSM's proposal relies solely on historic production to distribute funding and that is why Kentucky would receive less money than Ohio and Virginia under S. 2049.

There is no direct relationship between historic production and the number of AML problems in any given state. Kentucky's historic production percentage is 10.6%, less than Illinois with a percentage of 10.8%. Yet Kentucky has eight times the amount of unfunded Priority One and Two sites in the inventory than Illinois. Allowing states with fewer AML problems to receive significantly higher annual grants than Kentucky is not an equitable method of addressing the AML problem nationwide.

There should be no difficulty in beginning to address the reclamation needs in Kentucky. by maintaining the state share as in current law and preserved in S. 2086, the Thomas bill. Keeping the state share as in the Thomas bill would ensure that Kentucky received increased funding into the future.

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*The Legislation Concept Paper has been retained in committee files.

Question 3. Mr. Hohmann, you mentioned that you liked the Thomas Bill with certain modifications. Can you elaborate on the modifications that you think need to be made to the bill to better reclaim the lands in Kentucky?

Answer. Kentucky actually prefers the reauthorization changes made under the Cubin/Rahall bill (HR 3796) that is currently in the House. Although the Thomas bill is similar to the Cubin/Rahall bill in many ways, most notably that it keeps the state share intact, there are differences between the two. At a minimum, the Thomas bill should be modified to include the following from the Cubin/Rahall bill:

i. Extend the program to 2019.
ii. Continue to allow the AML Enhancement Rule.
iii. Include provisions to bolster the UMW Combined Benefit Fund.

Question 5. The Thomas Bill continues to pay out the state share of the reclamation fund. The Specter Bill, however, eliminates this. Mr. Hohmann, why is it important for Kentucky to keep the state share intact? Does Kentucky treat the state share money it receives different than the historic production money?

Answer. Kentucky has the third largest state share balance in the AML Trust Fund. Kentucky's share is $120 million. It is important to Kentucky to keep state share intact and return that money to the state in a manner that offers significant and immediate funding increases. Implicit in SMCRA is the promise from the federal government to return those funds to the states from which they were collected. S. 2049 returns those funds in a method that treats them like historic coal share, contrary to the way they are now distributed. State share funds should be returned as expeditiously as possible, not based on historic coal production. Additionally, we have estimated that the amount of fees Kentucky coal operators will pay into the AML fund during the first eight years of reauthorization under the Specter Bill will be in excess of $190 million. None of those fees would be Kentucky's state share. All $190 million would go to the federal share. Under the Thomas Bill, S. 2086, Kentucky would be able to claim ownership of 50% of that amount—$95 million.

Kentucky treats all funding the same. All AML funding, state or federal share, to Kentucky is used to reclaim high priority coal related problems. The same holds true in other eastern states. So, it isn't necessary to employ the historic coal share to make Kentucky and others spend AML funds on historic coal problems.

Question 6. Mr. Hohmann, why does Kentucky continue to receive new complaints about abandoned mines this far into the program? Hasn't Kentucky reclaimed most of its mines?

Answer. There are mainly three reasons for this. First, the coalfields are dynamic. Subdivisions and other development continue to expand into areas that were never before accessed by people . Abandoned Mines that were once remote are suddenly next door to a family with five children living in a new subdivision. The mine is now a hazard. Second, the AML program reclaims the hazards from the abandoned mines, not necessarily the mine itself. This is because it may not be cost effective or even feasible to reclaim an entire mine. When a large abandoned underground mine leaks water into the hillside causing a landslide, the AML program repairs the landslide, not the entire mine. The mine may then begin to leak water at another location, causing another AML problem. Third, sometimes AML problems do not manifest themselves until many, many years after mining. Again, a large underground mine may not leak for many years until a roof fall occurs causing a sudden rush of water. Or the roof fall could cause one area of the mine to accumulate water when it never had before, causing seepage to the outside. That same roof fall could also cause surface subsidence decades after mining was completed.

THE STATE OF WYOMING,
DEPARTMENT OF ENVIRONMENTAL QUALITY,
Cheyenne, WY, March 22, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: Thank you for the opportunity to appear before the Committee on Energy and Natural Resources and to present Wyoming's views regarding abandoned mine land legislation.

Enclosed herewith, please find Wyoming's response to the question submitted for the record.

Wyoming appreciates the hard work by you and your Committee to develop abandoned mine land legislation that will allow states to continue to address serious hazards to public hcalth and safety. The bill proposed by Senator Thomas of Wyoming

insures that all entities with a stake in the outcome of these deliberations are treated fairly.

Thank you for the opportunity to provide this additional information.

Sincerely,

EVAN J. GREEN,
AML dministrator.

[Enclosure.]

RESPONSE OF MR. GREEN TO QUESTION FROM SENATOR DOMENICI

Question. There seems to be some disagreement about the scope and priority of abandoned mine land problems in each state and nationwide. How do the States and OS M update their inventories, and how do we make sure that problems are prioritized consistently from state to state?

Answer. I will address the three issues raised in the question from the perspective of Wyoming's experience in managing our state AML program:

- scope and priority of the problems in each state and nationwide
- updating of State and OSM inventory data bases
- consistency of site categorization and prioritization from state to state

These issues present challenges for each state and for OSM, and are topics of ongoing discussion as we attempt to develop consistency in defining the scope of the problem and setting appropriate funding priorities to address these problems

SCOPE OF THE PROBLEM

Wyoming maintains both an internal site data base and also reports site information to the OSM Abandoned Mine Land Inventory System (AMLIS). There are discrepancies between Wyoming's internal data base and the AMLIS system for several reasons. New sites are constantly being identified through our inventory process. These new sites are recorded in Wyoming's internal data base, but are not entered into AMLIS until we have complete information including a cost estimate based on a field inspection of the site. The AMLIS inventory provides a reasonably accurate, broad-brush estimate of the scope of remaining work; but may lag behind individual state inventories. Wyoming does not enter sites into AMLIS until we have verified the eligibility and hazard ranking of the location. What is clear is that the sites currently in the AMLIS system are verified legitimate sites, and that the cost of reclaiming those sites is substantially in excess of the funds available.

Wyoming and other coal states are constantly discovering or identifying new sites which are legitimate hazards that should be reclaimed to protect public health and safety. Old mines continue to deteriorate, subsidence features occur with regularity, historic hazards formerly within active coal permits become eligible for AML funding. At the time of the passage of SMCRA, Wyoming and perhaps other states were not aware of the total scope of the problem, nor of the potential for ongoing deterioration in historic mining districts. This uncertainty leads in some cases to discrepancies in the estimates of the amount of funds required to "finish the job."

UPDATING STATE AND OSM INVENTORY DATA BASES

As noted above, individual states report site information to the OSM AMLIS data base, and as in the case of—Wyoming, may also maintain working data bases for internal use prior to AMLIS entry. Wyoming has an ongoing inventory process to identify new and hazardous sites. Like many states, Wyoming receives reports of previously unknown hazards from private landowners, federal land management agencies, hunters and hikers, mining companies, and AML contractors working on other projects. These sites are recorded, and as resources allow, verified for eligibility and cost before being entered into the AMLIS data base. OSM is dependent on the individual states and Tribes to report site information, and does not have the resources to verify these sites or secure information independently.

CONSISTENCY OF SITE CATEGORIZATION AND PRIORITIZATION FROM STATE TO STATE

This is perhaps the most difficult and contentious issue referenced in the question. Not all states may categorize a site in the same way, nor assign the same priority. AMLIS reporting provides some consistency since all states use the same inventory form to enter information into the data base. The questions on the form, if answered correctly and based on accurate information, should drive categorization as either a Priority One, Priority Two, or Priority Three. Wyoming defaults to the SMCRA definitions of Priorities for our internal data base as well, and addresses lower priority sites only if those sites occur in conjunction with a higher priority

project. Wyoming certainly has enough P1 and P2 sites to consume both the current state share of the AML trust fund, and funding from future state allocations.

Some states want the flexibility to designate some "general welfare" sites as Priority Two health and safety projects. While this is not an issue in Wyoming, it is obvious that the expenditure of AML funds for other than legitimate Priority One and Priority Two projects will extend both the time and the resources required to complete high hazard projects nationwide. Alternatively, individual states closest to the problem are probably in the best position to prioritize projects and sites, and address them accordingly.

Wyoming notes that both the Cubin/Rahall and the Thomas bills currently under consideration would require a review of both current AMLIS site listing and of future state AMLIS submissions to insure that these sites meet the Priority One or Two criteria.

APPENDIX II

Additional Material Submitted for the Record

PENNSYLVANIA ENVIRONMENTAL COUNCIL,
March 9, 2004.

Hon. PETE V. DOMENICI,
Chairman, U.S. Senate Committee on Energy and Natural Resources, Dirksen Senate Building, Washington, DC.

DEAR SENATOR DOMENICI: The Pennsylvania Environmental Council strongly supports the Bush Administration's proposal to modify and reauthorize the Abandoned Mine Reclamation Fund before it expires on September 30, 2004. We thank Senator Specter for taking the lead in the Senate to introduce this timely proposal as S. 2049 and are grateful to Senator Santorum for signing on as a co-sponsor. Both Senators have shown a commitment to improve the program to efficiently and effectively reclaim the country's abandoned coal mine legacy. We also appreciate the leadership of Congressman Peterson, who introduced the proposal in the House of Representatives as H.R. 3778.

On February 4, Interior Secretary Gale Norton traveled to Pennsylvania to announce the Administration's historic proposal and to personally view our massive abandoned coal mine problems. The Pennsylvania Environmental Council was pleased to join Secretary Norton, Congressmen Peterson and Sherwood, and Governor Rendell for the announcement. During her trip to Harrisburg, Secretary Norton noted that of the more than 3.5 million Americans who still live less than a mile from a dangerous high-priority abandoned coal mine site, nearly half—about 1.5 million people—live in Pennsylvania.

Secretary Norton captured the problem when she said, "Everyone in America has benefited from Pennsylvania coal for almost 300 years, but only Pennsylvanians have had to live—and sometimes die—with the consequences. The Administration's legislation, introduced by Senator Specter, will get serious about saving lives, improving health and safety, and restoring ruined landscapes in Pennsylvania."

Specifically, this legislation is important to protect our communities and families from hazards posed by coal mines abandoned before 1977. Dangerous shafts, mountains of black waste, polluted waters, and depressed economies abound in Pennsylvania. 44 of Pennsylvania's 67 counties contain a total of nearly 200,000 acres of abandoned mine lands. Abandoned mines pollute public water supplies, destroy fish and wildlife habitat, and threaten human health and safety. Abandoned mine drainage is among the largest sources of water quality impairment in the Commonwealth, plaguing over 2,100 miles of streams.

The Commonwealth currently receives about $24 million per year from the Fund. In addition, Pennsylvania has committed substantial state and private dollars and countless hours of professional and volunteer time to addressing the abandoned mine problems. We have successfully leveraged federal funds to clean up toxic mine water, extinguish mine fires, and eliminate other dangerous abandoned mine hazards, but the job is far from finished. This proposal would increase that level to over $35 million per year over the next 15 years, enabling Pennsylvania to make significant progress in cleaning up abandoned mine lands and abandoned mine drainage.

The Abandoned Mine Reclamation Fund is not currently structured to efficiently and effectively complete the job of reclaiming coal mine lands abandoned before 1977. The states that fueled the coal boom in the early and middle part of this century and helped fight two World Wars currently have low coal production relative to our western counterparts, yet we have the largest legacy of adverse mining impacts from before 1977. The majority of grants distributed to the states are based on current rather than historic production. When the program began in 1977, production in the eastern states was high enough to ensure that our states received a proportion of the funds that roughly aligned with the extent of our problems.

Since then, production has shifted away from the states—including Pennsylvania—with high historic production and 94% of the abandoned mine land problems.

Office of Surface Mining Director Jeff Jarrett captured the essence of the problem in a white paper entitled The Job's Not Finished in which he pointed out that "there is a direct correlation between a state or tribe's historic production and the magnitude of its AML problem . . . there is no relationship between the current production state share portion of the grant and the magnitude of the AML problem in that state or tribe."

We are very pleased that Senator Specter's legislation changes the formula to direct resources from the Fund to states based upon historic coal production. It corrects existing imbalances and directs resources toward states like Pennsylvania with the most severe problems. As a result, it will rapidly increase the pace at which we will be able to finish the job of reclaiming our dangerous abandoned mine sites and the waters they pollute.

As abandoned mine lands are reclaimed, they offer potential locations for economic development. By developing and marketing abandoned mine lands that would normally struggle to attract new investment, these "grayfields" can be turned into regional benefits by creating economic opportunities, preventing sprawl, and conserving open space and watershed resources.

The Pennsylvania Environmental Council thanks Senator Specter for taking the initiative to lead the charge in the Senate to fix the Fund, help improve the quality of life in coalfield communities, and restore our lands and waters. Failure to act continues a cycle of depressed economies and unemployment while exposing our communities and families to health and safety hazards. We urge you and your colleagues in the Senate to pass S. 2049.

Sincerely,

ANDREW S. MCELWAINE,
President and CEO.

STATE OF WYOMING,
Cheyenne, WY, March 10, 2004.

Chairman PETE V. DOMENICI,
Senator JEFF BINGAMAN,
U.S. Senate Committee on Energy and Natural Resources, Dirksen Office Building, Washington, DC.

DEAR SENATORS DOMENICI AND BINGAMAN: Three different bills have been introduced in Congress to address the reauthorization of the Surface Mining Conservation Reclamation (SMCRA). As the Governor of the nations' largest coal producing state and by far the largest contributor to the fund, I write to give you Wyoming's perspective, and seek support for our position.

Within the original 1977 enactment of SMCRA is the Abandoned Mine Land (AML) Fund—now set to expire on September 30, 2004. This fund was designed to provide for the clean-up and rehabilitation of mining locations throughout the United States.

As mentioned above, there are at least three legislative proposals now filed that would extend SMCRA and the AML Fund. Unfortunately, current law and the proposals filed have become vastly more complex.

We would ask you though, to consider the following as the most critical aspects of any renewal.

- The return of money overdue the states and tribes.

The federal government has been collecting a per ton tax on mined coal for over 25 years. Half of this tax is by law to be returned to the states and tribes from which is generated. This is not happening. The fund currently owes over one billion dollars to 27 states and tribes. These funds should be returned to the states it legally belongs to, immediately, and without restriction.

- Reaffinning the commitment to work with the states in the future.

The original concept of the fund—that half of the moneys collected be returned to the states—is sound. Reaffirming this commitment will allow coal producing states to stay up with their necessary and evolving reclamation needs—needs that exceed those acknowledged by the federal government.

- Cutting the rate of the tax.

Wyoming agrees with the proposals pending before Congress that the rate of tax is too high and should be reduced.

• Commitments made to miners and their families should be honored.

The federal government must honor the promises it has made to coal miners and their families when it agreed to pay their health care expenses. I believe the Cubin-Rahall proposal provides a viable solution to this facet of the issue.

I would ask that you consider supporting the proposition that a state is entitled to rely on the promises of the federal government. We ask you to advocate not for charity or handouts on behalf of any constituency, but rather for the proposition that when Washington, DC makes a promise to its citizens, or its states, it will keep it. That when Washington, DC takes from the states and promises to repay, it will.

Thank you for your time and consideration.

Best Regard,

DAVE FREUDENTHAL,
Governor.

KENNECOTT ENERGY COMPANY,
Gillette, WY, March 10, 2004.

Hon. CRAIG THOMAS,
U.S. Senate, Washington, DC.

DEAR SENATOR THOMAS: On behalf of the Kennecott Energy Company (Kennecott), thank you for introducing S. 2086, the Abandoned Mine Land Reclamation Reform Act of 2004. It is my understanding that the Senate Committee on Energy and Natural Resources will hold an oversight hearing on the Abandoned Mine Land (AML) program March 11, 2004. I wanted you to know before that hearing that Kennecott supports S. 2086 and your efforts to address the issues surrounding the AML program.

Kennecott believes that the AML program should be reformed in a manner that brings fairness to the fee structure, stops the expansion of the use of AML fees beyond their original intent, spends the collected monies where it is most needed, and fulfills its commitment to the participating states. S. 2086 addresses these issues in a fair and balanced manner and we thank you for your leadership.

Kennecott supports your efforts in addressing the fee structure under the AML program. As you know, many western states have addressed their abandoned coal mine problems, yet coal companies operating in these states are still required to pay significant AML fees. I am hopeful that during the reauthorizations process, Congress will reduce the AML fees, which will ultimately reduce the cost of energy to the consumer.

Again, thank you for introducing S. 2086 and for your leadership on this important issue.

Best regards,

BRET K. CLAYTON,
President and CEO.

NEW MEXICO ENERGY, MINERALS, AND
NATURAL RESOURCES DEPARTMENT,
Sante Fe, NM, March 10, 2004.

Hon. PETER V. DOMENICI, *Chairman,*
Hon. JEFF BINGAMAN, *Ranking Minority Member,*
U.S. Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

Senate Committee on Energy And Natural Resources Hearing on Abandoned Mine Land Legislation, March 11, 2004

DEAR CHAIRMAN DOMENICI AND SENATOR BINGAMAN: On behalf of the New Mexico Energy, Minerals and Natural Resources Department, we respectfully submit a Statement to be entered into the record of the Senate Committee on Energy And Natural Resources Hearing on Abandoned Mine Land Legislation. We appreciate the opportunity to present this statement, and look forward to working with the Committee in the future. We are available to answer any questions you or your staff may have on this topic.

Sincerely,

JOANNA PRUKOP,
Secretary of Energy, Minerals and Natural Resources.

[Attachments]

STATE OF NEW MEXICO

Thank you for the opportunity to present a statement on this important topic. New Mexico brings an important perspective to the debate over the future of the abandoned mine land (AML) program. As a state with a smaller AML program, we struggle to efficiently and effectively employ our limited resources in the face of large problem. As a Western state with abandoned coal mines remaining to be reclaimed, we struggle with balancing the need to complete the coal mine projects with the enormous need to safeguard the numerous and dangerous abandoned non-coal mines. And with other Western states, we share the concerns that expanding residential development and recreational use are increasing the exposure to abandoned mine dangers.

New Mexico has a long and distinguished mining history. Native Americans mined turquoise, lead, coal and copper hundreds of years before Europeans arrived in North America. Spanish exploration and mining began in the late 1500s and expanded across the state. In the 1820s, the discovery of gold near Cerrillos triggered a rush decades before the California Gold Rush. Coal mining expanded in the nineteenth century driven by demand from the military, the railroads and non-coal mines across the Southwest. Today, New Mexico is home to some of the largest copper and coal mines in the United States.

Centuries of mining have also left another legacy: thousands of open pits and shafts and other mine hazards that pose a serious threat to public health and safety. Since 1990, we are aware of at least five fatalities at abandoned mines in New Mexico. Numerous other serious injuries and costly rescues have occurred at these mines. Among the victims have been both local residents and visitors to New Mexico.

The Abandoned Mine Land Program, established under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), has made significant gains in eliminating abandoned mine land threats across America. By directing funds to state agencies, the AML Program allows the states to focus on the greatest threats to public health and safety.

In New Mexico, a small annual AML grant funds a program that has completed numerous projects across the state. New Mexico's annual grant has averaged near 51,800,000 in recent years. Despite the small grant, New Mexico's AML program has received national and regional awards for its reclamation work. During the history of our program, over 1000 mine openings have been closed and hundreds of acres of mice waste have been remediated in New Mexico.

In addition to protecting public health and safety, the New Mexico AML program has provided numerous other public benefits. AML projects are a source of construction contracts and jobs for New Mexicans. While most project investigation and design work is conducted in-house, all construction work is performed by private contractors, almost all of whom are based in New Mexico.

AML projects have also expanded our knowledge of New Mexico's mining heritage and created opportunities for public recreation. The Cerrillos Hills Project, completed in 2003 with the closure of 90 mine openings, allowed the expansion of a newly created historic park. Hiking and horseback riding trails now run past former mine hazards where interpretive signs and overlooks allow the visitors to learn about early mining history. The Sugarite Coal Mine Project near Raton, which earned several national awards in 2002, involved the reclamation of coal mine openings and mine waste piles now located within a popular state park.

However, despite these gains, considerable work remains in New Mexico. We estimate that over 15,000 mine openings at more than 5000 mine sites in New Mexico remain unreclaimed. While significant costly coal mine projects remain, the majority of the sites are found in large non-coal mining districts. In both the Lake Valley and Orogrande Districts in southern New Mexico, where the AML program has recently begun planning projects, the number of unreclaimed mine features exceed a thousand. The Orogrande District is the site of the most recent fatality in New Mexico.

In addition, as development and public recreation moves further into areas once considered remote, the threat from long forgotten mine workings increases. Newly designated recreational areas increasingly provide access to old mining districts. The Lake Valley District, located far from populated areas, is now publicized as a "Back Country Byway" by the BLM. An example of development encroaching on mining areas occurred this past summer when a person broke into a closed mine near Santa Fe fell down the shaft and had to be rescued. When the abandoned mine was closed 15 years ago, there were not even 4-wheel drive roads nearby; today, the site is adjacent to a subdivision.

For these reasons, New Mexico urges Congress to reauthorize the AML fee in SMCRA. New Mexico has been and remains a strong supporter of the efforts of the National Association of Abandoned Mine Land Programs and the Interstate Mining Compact Commission to develop a reauthorization proposal that focuses the fee expenditure on the greatest needs and treats all states equitably. Gov. Richardson has also sponsored a Western Governor's Association on AML issues.

In reviewing the proposals for AML fee reauthorization, New Mexico urges that reauthorization legislation address the following key issues:

- The fee collection authority should be extended for a sufficient period, at least 12 years, to address the majority of high priority health and safety problems throughout the country.
- The minimum annual funding for states should be set at a guaranteed level of $2 million. The efficiency of state programs depends on long term planning and on the ability to maintain a staff that can effectively investigate and design projects. Having a guaranteed minimum annual grant is essential to the effective use of the funds. The minimum funding level should be used for both uncertified and certified states.
- The control over the "certification" of state programs should remain in the hands of the states. AML programs work on multi-year projects and therefore need to plan the transition to certification. SMCRA currently allows the states to decide when certification is appropriate and there is no reason to change this provision.
- The "state share" portion of AML fee distribution must remain intact. The state share, in coordination with the historic production share, is essential for the equitable funding of the state and tribal programs. The "state share" has been criticized for diverting a majority of AML funds to the Western states. That criticism is not true. For example, in 2002, the western jurisdictions of New Mexico, Montana, Colorado, Utah, Wyoming, Navajo and Hopi provided 58% of the AML fee collections but only received 26% of the AML distributions. Because of current production, the Western states do, and will continue to, contribute the majority of the AML fee revenues. Because of historic production, the Eastern states will always receive the majority of the distributions. The state share insures that the Western states and tribes receive at least some of the distributions.
- Any amendments to SMCRA should not inhibit the ability of the states and tribes to address high priority non-coal projects. SMCRA recognizes that high priority non-coal projects are an appropriate use of the funds. We urge Congress to consider alternatives for addressing the numerous and costly non-coal projects not currently covered by SMCRA.
- Any changes to the funding mechanisms in SMCRA should treat tribal AML programs fairly. New Mexico has worked extensively with the Navajo and Hopi AML programs, both of which are enormously successful.
- The legislation should contain a mechanism for the eventual return to the states of the accumulated and unappropriated state share portion of the AML trust fund.

We appreciate the opportunity to present this statement, and look forward to working with the Committee in the future.

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Harrisburg, PA. March 29, 2004.

Hon. PETE V. DOMENICI,
Chairman, U.S. Senate Committee on Energy and Natural Resources, Dirksen Senate Building, Washington, DC.

DEAR SENATOR DOMENICI: I am writing to reiterate Pennsylvania's strong support for the reauthorization of fee collections under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The authority to collect this fee expires on September 30, 2004, but the need for its continuation is unquestioned wherever coal has been mined in this nation.

I appreciate the focus that the Committee on Energy and Natural Resources, with your leadership, has brought to bear on this issue. The committee hearing chaired by Senator Thomas on March 11, 2004, was an important step toward the ultimate goal of ensuring that needed resources are available to clean up Pennsylvania's and the nation's abandoned mine lands. More than one third of the nation's inventory of abandoned mine lands is found in Pennsylvania. More than 1.5 million of the 3.5 million people the Office of Surface Mining (OSM) estimates live within one mile

of a hazard associated with abandoned mines are Pennsylvanians. It is imperative that we fulfill the commitment made with the passage of SMCRA in 1977: that is, to reclaim our abandoned mine lands so that health and safety hazards are eliminated, the quality of our environment is protected, and our ability to beneficially use our land and water resources is maintained.

The Committee is considering two bills on this issue: S. 2049 is supported by the Administration and was introduced by Senator Arlen Specter and cosponsored by Senators Rick Santorum and George Voinovich; and S. 2086 was introduced by Senator Craig Thomas and cosponsored by Senator Michael Enzi. Pennsylvania favors Senator Specter's bill, as it more effectively directs the distribution of funds to reclaim existing high-priority health and safety problems. As the committee analyzes the individual provisions of each of these bills, we offer the following specific comments.

Pennsylvania believes the Committee should ensure that the following concepts are part of the final version of any bill it approves. These concepts are important if the goals of the program are to be achieved and both bills support them to some degree.

- Extension of fee collections.
- Elimination of the Rural Abandoned Mine Program (RAMP) and allocation of the funds for distribution under the historic coal formula.
- Continuation of the ten percent set-aside for acid mine drainage remediation.
- Elimination of the lien requirements.
- Incentives for remining.
- Repays the state share balance as of September 30, 2004.
- Provides for funding for the Combined Benefits Fund (CBF).
- Provides a minimum of $2 million to non-certified states and tribes.

Senator Specter's bill, S. 2049, makes good progress in addressing many of the objectives outlined above. For example, it proposes to extend fee collections for an additional 14 years. Although the bill also proposes an approximate 20 percent fee reduction, the adverse impact of the reduced revenue is lessened since allocations would be based entirely on historical coal production. The bill transfers the current RAMP balance to the federal share for use on highpriority problems and also redirects that portion of future revenues for the same purpose. Additional provisions that Pennsylvania supports include the continuation of the ten percent AMD Set-Aside program, elimination of lien requirements, inclusion of remining incentives, and funding for the CBF.

S. 2049 provides that future collections will be allocated to non-certified states and tribes based on the historic coal formula. The states and tribes with the largest amount of mining performed prior to the passage of SMCRA are also the states that have the largest inventory of high-priority problems. The historic coal production formula for allocation of collections ensures that needed resources are made available to deal with the largest inventories of highpriority problems.

The issues that are the subject of these legislative proposals are complex, so it is not surprising that there are differences in approach. Pennsylvania is encouraged by the fact that Senator Specter's bill, S. 2049, and S. 2086, sponsored by Senator Thomas, are in firm agreement on the fundamental goal of extending the authority to collect the fees mandated by SMCRA. Further, there is agreement between the two bills on several important provisions, such as continuation of the ten percent set-aside acid mine drainage program, removal of lien requirements, and some support for remining incentives. The differences in approach between the two bills offer opportunities to compromise in a way that would strengthen the final version. The most important example is that Senator Specter's bill relies only on revenues generated through fee collections, and so does not accommodate future allocations for certified states beyond those needed to distribute their unappropriated state share balances. S. 2086, on the other hand, supports future payments to this group by introducing a new source of funding—the unallocated ten percent of the royalties collected from minerals produced on federal lands. Because increasing the size of the pie makes the task of reconciling conflicting objectives easier, Pennsylvania supports the provision in S. 2086 that uses these revenues to pay state share balances and future state share allocations for certified states with public lands. Montana and Wyoming would qualify under this provision; the funds that are no longer needed for these two states are then available to be reallocated for distribution using the historic coal production formula.

S. 2049 proposes that states and tribes with approved AML programs be required to administer the emergency program as well. Emergencies in Pennsylvania are currently funded under the OSM budget. We believe that an integral part of implementation of this provision should be a commitment to providing the additional needed

resources, so Pennsylvania does not find itself having to divert funds from its existing allocation. S. 2049 also proposes that there should be a limit on the amount of funds awarded under the historic coal production formula. Pennsylvania understands the desire to ensure the allocation formula proposed in S. 2049 does not result in reduced allocations for individual states or tribes. We recommend a careful consideration of this provision to ensure that the imposition of a statutory limit does not cause difficulty in making justifiable adjustments in the future.

S. 2086 includes a key provision that can be relied on to develop a stronger bill. Although S. 2086 proposes continued funding for states that have completed work on highpriority problems, thus diverting critical resources from the areas where they are most needed, it does so by introducing additional funds from mineral leasing revenue on public lands. Pennsylvania recognizes the importance of this issue to the affected states, and believes this is a reasonable compromise approach. A provision in S. 2086 would eliminate an existing program authorized by current law—the exception allowed for "government-financed" operations that enable reclamation to be accomplished at no cost to the program. In the last four years, Pennsylvania has overseen 80 projects, reclaimed 700 acres and saved four million dollars through the implementation of this program. Given the huge reclamation task Pennsylvania continues to face, I call on the Committee to recognize the benefit to the program provided by the reclamation of hundreds of acres annually with zero cost for construction and to continue its support.

I urge you to give serious consideration to the issues discussed above. We owe it to our citizens to make decisions that will enable the reclamation of the high-priority coal problems that still face this nation. An allocation formula that is structured to deliver funds to the states and tribes where the problems are located is a critical part of our obligation. I look forward to the discussion as the Committee continues its work to reauthorize fee collections prior to the expiration date of September 30, 2004.

Sincerely,

KATHLEEN A. MCGINTY,
Secretary.

STATEMENT OF CITIZENS COAL COUNCIL

Mr. Chairman, members of the committee, this statement is submitted on behalf of Citizens Coal Council to the Senate Energy and Natural Resources Committee on the issue of the reauthorization of the Abandoned Mine Lands program. CCCappreciates the opportunity to present its views and respectfully requests that this statement be included as part of the hearing record.

IDENTITY AND INTEREST

Citizens Coal Council (CCC) is a federation of 47 coalfields citizens groups in 20 states. Our members live near abandoned mine sites and have been deeply involved in the struggle to clean them up. They restore watersheds from mine drainage, work to identify AML hazards and get funding for their cleanup, clean up abandoned mines themselves, and work to protect their communities from drinking water contamination from abandoned mines by working for AML-sponsored waterlines.

CCC and its members care deeply about this program—it makes a direct impact on our families' health and safety and the well-being of our communities. We have worked for several years both in Washington and in the coalfields to bring attention to its importance and the need for reauthorization.

CCC'S POSITION ON THE AML PROGRAM

Abandoned mines are not just one state or another's problem. Our entire country has benefited from these old mines—they fueled our country's industry for over a hundred years, making possible cross country railroads and cities of steel. Every coal company, regardless of where they are located, has benefited from the utilities' longtime dependence on coal, and thus has a responsibility to pay for the clean-up of these old mines.

Now, having waited 25 years to get these hazards cleaned up and with more than 3.6 million people living within one mile of abandoned mines, we urge the Committee to realize that this is a critical health and safety matter and to come together to adopt a reauthorization bill to solve this issue once and for all.

We ask that the Committee focus on one simple question—how can we structure this reauthorization to clean up as many mines and protect as many people as possible?

With that question in mind, Citizens Coal Council has not endorsed any of the bills currently proposed in their entirety. Our members from across the coalfields have established that certain things should be in an AML reauthorization bill if it is truly going to clean up these hazards. In addition to the following, we support continued funding of the UMWA Combined Benefits Fund through AML interest.

1. Extend the collection of the AML fee and the AML program long enough to finish the job: 25 years

At current levels of reclamation, 20 states will not be done the 10 years called for in S. 2086—two-thirds of states and tribes getting AML funds. These states are Alaska, Arkansas, Alabama, Colorado, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, Montana, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, Washington, and West Virginia.

Based on current funding levels, projected future production, and estimated cost of cleaning up inventoried sites, it will take 25 years to address AML problems in the country. Extending the program another 25 years would honor the intentions of the program created by the 1977 surface mining law—that communities which provided natural resources and labor which fueled the nation for many years before federal regulation of surface mining would not have to forever be burdened by unreclaimed coal mines.

2. Increase the level of funding allocated to areas where pre-1977 mining occurred

The primary purpose of the AML program is to reclaim land mined before 1977. Though many of the areas that mined coal before 1977 currently have low coal production, these areas are the ones in most desperate need and are the states that fueled the nation prior to enactment of surface mining laws. Funding should be directed there.

3. Don't undermine the financial basis of the AML program by cutting the fee

The 20% fee cut called for in both bills is a waste of money that could be spent cleaning up dangerous hazards. It is also irresponsible in this time of deficits. Savings from the fee cut are not economically significant and will not be passed on to the consumer—but it will cost the AML fund $50 million a year. This is money that the AML fund desperately needs.

4. Do not use AML moneys to subsidize coal company reclamation bonds

S. 2049 call for the federal government to develop regulations to use AML money for "financial assurance for remining operations in lieu of all or part of the performance bond required under section 509 of this Act." This is a misappropriation of AML funds, which should be spent on threats to our health and safety. Our communities live daily with orange streams, subsidence, and safety hazards because there is not enough AML money to go around. In contrast, remining usually does not address the most hazardous sites.

Subsidizing mining bonds encourages irresponsibility. One of the key reforms of the 1977 surface mining act was to make coal companies put up the money beforehand to reclaim their mine. If a company decides not to reclaim, it forfeits its bond and loses that money. Without a financial stake in the reclamation bonds, a company has no incentive not to forfeit the bond—or not to mine recklessly before it forfeits.

In addition, remining AML sites always has the potential to increase the size and scope of the problem, causing slides from unstable highwalls, new acid mine drainage, new subsidence, or underground flooding. This is not something the federal government should become financially responsible for. Remining is already encouraged with exceptions from water quality standards

5. Continue to recognize clean water as a health priority

S. 2086 removes "general welfare" as a category for priority 2 funding, meaning many stream restoration and water projects will no longer be funded. Polluted water is a health threat and cleaning it up should be funded that way. Restoring headwater streams, a "general welfare" activity, has a direct impact on the availability of clean drinking water and the health of the rivers downstream.

(please refer to a recent study "The Scientific Imperative for Defending Small Streams and Wetlands.)

Retaining this provision does not deprive any other states of their share of funding. It provides states with more flexibility to address the most important hazards as they perceive them. Living with the problems provides them with the insight to choose where this funding should be spent to address health and safety issues.

6. Increase minimum program funding level from $2 million to $ 4 million annually

States which have significant AML problems but which have small AML programs are supposed to be guaranteed minimum funding of their programs by statutory mandate. Since 1977, this minimum program funding has been set at $2 million. 25 years later that is not enough money, even if it was fully funded, to address the serious problems in these states.

7. Include non-primacy state programs as minimum programs

States which do not have their own coal regulatory programs are not eligible for a 50% share of AML money collected in the state or funding based on historic production. These states do not have the same minimum program funding guarantee afforded to states with regulatory primacy. These states are also limited in what types of AML problems they can receive funding to address. If a state demonstrates the ability to operate an effective abandoned mine reclamation program and funds it accordingly, like Tennessee, it should be granted federally managed (non-primacy state) minimum program funding.

CONCLUSION

Mr. Chairman and Members of the Committee, CCC respectfully encourages you to consider the above issues and to remember that the purpose of the AML program is to clean up America's abandoned coal mine hazards. Please pass out of committee a bill that will do that, once and for all. We appreciate this opportunity to present our views.

STATEMENT OF MARI JO FLANAGAN, ASSISTANT GENERAL COUNSEL AND DIRECTOR—GOVERNMENT & REGULATORY AFFAIRS, THE BRINK'S COMPANY

INTRODUCTION

The Brink's Company is pleased to submit this testimony in conjunction with the Committee's hearings on S. 2086 and S. 2049, bills to amend the Surface Mining Control and Reclamation Act of 1977 and reauthorize the abandoned mine lands (AML) program and to adakess, in part, issues related to the Combined Benefit Fund (CBF) established under the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act). I offer the following testimony on behalf of The Brink's Company, formerly named The Pittston Company and all of its subsidiaries.

The two bills before the Committee today propose important changes to the nation's abandoned mines programs, but also include specific and differing changes in the relationship between the Abandoned Mine Land Reclamation program (AML program) and tile UMWA Combined Benefit Fund or CBF, a separate fund established by the Coal Act to address coal miners' health benefits. It is the CBF aspects of S. 2086 and S. 2049 that Brink's would like to address today.

BACKGROUND

The Coal Act was enacted in late 1992 to secure the health benefits of more than 100,000 UMWA retirees and dependants who were receiving health care from two collectively bargained multiemployer benefit plans sponsored by the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA). The Act's financing provisions were bitterly contested by many companies—including Brink's predecessor Pittston—because they were fundamentally unfair and were expected to be financially devastating. Subsequent events have proven our concerns to be well founded.

Through more than 40 years of collective bargaining, the UMWA and the BCOA created and sponsored one of the most expansive and costly benefit programs in the country. The Coal Act shifted a significant portion of the cost of this expansive program to companies that were no longer part of the BCOA, or even still in the coal business. Among other things, the Coal Act relieved the UMWA and the BCOA of their responsibility for managing the scope and financing of coal miners' retiree health care. The Act merged the collectively bargained multiemployer plans into a new statutory benefit plan called the UMWA Combined Benefit Fund to assume that task.

Importantly, the Coal Act included a "related person" provision, under which joint and several liability was imposed on corporate parents and related companies of coal mining companies along with the coal mining company, even though these affiliated companies had no connection to the coal mining business other than having a common parent. Today, those related companies are liable for their coal company affili-

ate's obligation to pay premiums to tile UMWA Combined Fund. In some cases these premium liabilities amount to hundreds of millions of dollars.

Brink's, Incorporated, a company whose armored trucks are so well recognized throughout our country, is a perfect example of the unintended and unfair consequences of the Coal Act's liability scheme. Brink's, Incorporated is owned by The Brink's Company, the same parent that owned coal mines in the 1970s and 1980s, and that owned subsidiaries in the mining business. In 2003, The Brink's Company completed divestiture of its coal mining operations and today it is not itself, nor through any subsidiary, in the coal mining business. Yet, by virtue of its historic common parent to former coal mining companies, Brink's, Incorporated, which was never in the mining business, is saddled with joint and several liability for hundreds of millions of dollars of CBF obligation.

At the outset I want to be perfectly clear that The Brink's Company is not proposing that it evade its obligations to the CBF.

Proponents of the joint and several liability provisions in the Coal Act have argued that those provisions were necessary to ensure that the entirety of a corporate groups assets would be available to pay for coal miner health and pension benefits. Yet, there is no valid reason why non-coal mining companies should have to bear these legacy liabilities for separate corporate entities in a completely different industry. Indeed, the statute has had the exact reverse effect from what was intended—these legacy Coal Act liabilities significantly depress the financial picture of the entire corporate family, particularly the non-coal affiliates, and reduce significantly the appeal of investors to become shareholders and infuse capital that would be utilized to directly or indirectly fund the obligation to pay premiums into the Combined Fund to provide these generous benefits. A perhaps unintended, but very real consequence of this dynamic is that many coal companies and their parent organizations have gone bankrupt, and the non-coal miring businesses (like Brinks, Incorporated) are forced to forego recognition of their economic success to fund the obligations of a family member that once was in the coal industry.

RECOMMENDATIONS FOR CONGRESSIONAL ACTION

Brink's urges the Committee to consider addressing this issue in S. 2086 and S. 2049, and we present a simple and fair solution—eliminate the ongoing joint and several liability provisions for those companies that are today prepared to assume their full obligation by prepaying their Combined Benefit Fund obligations, backed by an ongoing obligation of the parent company. This is a win-win situation for all concerned.

The Combined Fund would receive the actuarial value of the future premium obligation from the obligated company. This solution could virtually eliminate the consequences of what in fact transpired last year when LTV Steel, Bethlehem Steel and National Steel—each of whom was a participant in the coal mining industry and a major contributor to the Combined Fund—entered into bankruptcy and were no longer able to meet their obligations. The Combined Fund would no longer be at the mercy of adverse conditions, which might in some future year result in the entire group being unable to honor its statutory obligations. This proposal, coupled with the AML funding changes proposed elsewhere in these bills will provide to the CBF predictability and certainty, which will assist in ensuring its financial stability, as its future obligations will be "pre-funded" and further secured by the parent company's retention of the obligation.

This course of action will present a substantial positive economic effect for non-coal mining companies, like Brink's, Incorporated, which, once relieved of the financial stigma of joint and several liability for a sibling's obligations can use their financial strength to raise funds in the capital markets, maintain their current growth and employment rates, and create even more domestic jobs in the future through both national and international expansion.

I want to be clear, however, and state again that The Brink's Company is not proposing that it evade its obligations to the CBF. Since the parent remains liable to resume paying premiums in the event the prepaid amount should be depleted while beneficiaries remain alive, the Combined Fund is at no risk of loss.

There is a second issue that Brink's urges the Committee to address in considering S. 2086 and S. 2049, and that is the Coal Act's requirements that those current and former coal companies that today survive must assume liability for "unassigned beneficiaries"—those miners who worked for coal mining entities that are no longer in business. On its face, this feature of the Coal Act was unfair when enacted in 1992, and has become even more severe in recent years as some of the major steel companies addressed above have gone bankrupt. The effect of these bankruptcies simply multiplies the burdens on those companies, such as The Brink's Company,

that today remain viable. The result is to create an ever-dwindling number of companies that must shoulder the burden of those companies who, through misfortune or design, have failed financially and no longer pay for their obligations.

Brink's does not object to the statutory requirement that each individual coal mining company provide ongoing health benefits to its employees. As the weaker companies fail financially and drop out of the picture; however, the present law exposes surviving companies (and their entire non-coal mining corporate family as discussed in the previous section), to an obligation to provide benefits to miners with whom the company never had an employment relationship. This situation was created by Congress, and we ask that the Committee eliminate those provisions which impose on the remaining companies the burden of paying for the health care benefits of these "orphan" retirees, in addition to providing relief from the Act's joint and several liability provisions.

We request that the Committee modify the Act to provide Brinks and other companies subject to section 9711 of the Act relief from the "related person" provisions of this section. Section 9711 requires coal companies (and their "related persons") to maintain an employer sponsored benefit plan for certain retirees who are not eligible for enrollment in the Combined Fund. The proposed change to section 9711 provides that, in a process similar to that relating to the CBF, affiliates of a coal company would be relieved from the Act's onerous joint and several liability provisions upon posting financial guarantees to secure performance of the requirements imposed under section 9711. Importantly, under the proposed language, the parent would remain liable for such obligations in the event the financial guarantees should ever prove inadequate to cover the health care obligations under this section.

We urge the Committee to consider seriously the changes to S. 2086 and S. 2049 that I have discussed; changes which do not conflict with the goals or intent of the Coal Act but which would redress the unfair burden that has saddled our company and other contributors to the economy of the United States.

Thank you.

STATEMENT OF JOE LOVE, CHAIRMAN, NATIONAL COALITION FOR ABANDONED MINE RECLAMATION

Mr. Chairman and Committee members of the Energy and Natural Resources Committee, my comments are directed toward extension of Title IV of the Surface Mine Control and Reclamation Act of 1977 (SMCRA) as amended and specifically toward the two Senate Bills S. 2049 and S. 2086.

The National Coalition for Abandoned Mine Reclamation represents all states impacted by past mining and represents a grassroots initiative to help citizens improve their communities and the quality of life in which they live by reclaiming the scars of past mining. The Coalition has support from the 3000 local Conservation Districts, State and National Watershed Associations and local cities and communities impacted by past mining. Our Coalition has been an active supporter of reclamation initiatives since 1983. The goal of the Coalition is to reclaim all the scars placed on the land by past mining.

We have studied both Bills and have the following comments:

We strongly support:

1. The extension of SMCRA. We also agree that based on the amount of work remaining in the current inventory and fee schedule in S. 2049, we support the target dates of 2018 or 2019 for completion of reclamation of past un-reclaimed coal mine sites that endanger public health and safety. We agree with the reduction of fees over time as outlined in S. 2049.

2. The creation of one single account from the fee collections and distribute grants to non-certified states and tribes based on historic coal production. This will better direct reclamation funds to those locations having the greatest health and safety problems and impacting the greatest number of persons.

3. Distribution of all un-appropriated balance to states and tribes as outline in S. 2049. Although we support this part of the bill, we need to point out that approximately 300 million of this un-appropriated balance was collected for the Rural Abandoned Mine Program (RAMP) administered by the USDA/Natural Resources Conservation Service, working though local Conservation Districts, for the purpose of reclaiming abandoned mine lands on private lands. Consideration should be given to this issue of using these funds for reclaiming reclamation sites under the Rural Abandoned Mine Program (RAMP). We do not support S. 2086 that proposes to use the RAMP funds for certified states having no health and safety problems and only very small amounts of environmental problems remaining. We would suggest that those states use their own state resources to reclaim those sites, allowing the unap-

propriated RAMP funds be allocated to states having huge amounts of environmental problems remaining (see item # 6 below).

Support the following:

1. S. 2049 providing no AML grants, from coal fees collection after enactment of the new extension, to states having certified completion but provides for direct grants based on justified needs from the respective state or tribe and availability of appropriated funds.

2. S. 2049 to provide needed health coverage for unassigned beneficiaries.

3. Two million allocations for minimum states and tribes including the state of Tennessee with an approved AML reclamation plan.

4. Remining incentives that will achieve greater reclamation health, safety and environmental problems with less cost.

5. S. 2049 providing incentive for states to assume responsibility for the emergency program.

6. Continuing the Rural Abandoned Mine Program (RAMP) as authorized in the 1977 Act and providing the opportunity for funding this important program from the general fund. We urge the Committee to strengthen this Bill by amending section 406 (B) Authorization of Appropriations as follows—Providing for an annual allocation of no less than 25 million to the Secretary of Agriculture, from the general fund of the Treasury to carry out the provisions of this section. At the present time, there are ten times the environmental problems than the health and safety problems, which will not be addressed without having a Rural Abandoned Mine Program (RAMP). Most of these abandoned mine sites involve private landowners who do not have the resources necessary to correct the problems. Many of these areas generate greater pollution problems than the safety and health concerns. RAMP would be the tool to address the environmental problems separate and not a duplication of other programs.

We do not Support the following:

1. Future reclamation set-aside program for the states as outline in S. 2049. This program was established to maintain a funding balance in the states and tribes AML programs. It is the Coalition position that funds appropriated should be used as quickly as possible for reclamation of abandoned mine land and not set-aside for the future. If Congress passes an extension of SMCRA as proposed in S. 2049, states and tribes have a three year window to use these funds for reclamation and if not used are available for others to utilize. We believe this adequate amount of time to use these funds without and additional set-aside program where the funds may not be used for tens of years. We support this authorization be deleted as provided for in S. 2086 and H.R. 3796.

We appreciate the opportunity to present this written testimony, Mr. Chairman, and strongly recommend that Congress take action to extend SMCRA during this session. We encourage you to consider our recommendations, which we believe, will strengthen the reclamation efforts and encourage a partnership effort at the local, state and federal level. We request that this become part of the hearing record. We request the complete record of the hearing testimony given during the hearing.

Thank you.

STATEMENT OF THE NATIONAL MINING ASSOCIATION

Chairman Domenici, Ranking Member Bingaman, and members of the Committee: the National Mining Association (NMA) expresses its appreciation for the opportunity to comment on the administration and performance of the Abandoned Mine Reclamation program established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The National Mining Association (NMA) represents producers of over 80 percent of America's coal, a reliable, affordable, domestic fuel that is the source for more than fifty percent (50%) of the electricity that America uses today. NMA also represents companies that produce metals and non-metals, companies that are among the nation..'s larger industrial energy consumers. NMA members also include manufacturers of processing equipment, machinery and supplies, transporters, and engineering, consulting and financial institutions serving the mining industry.

The Abandoned Mine Reclamation program was established with the principal objective of restoring unreclaimed lands mined for coal prior to SMCRA's effective date of August 3, 1977 that pose threats to the public health and safety. The Abandoned Mine Land (AML) fee paid on each ton of coal produced and sold to fund the program was authorized initially until 1992, but has been extended twice. With the current authorization scheduled to expire on September 30, 2004, there have been many viewpoints expressed about the remaining requirements and the need to ex-

tend the fee to support those requirements. In this regard, NMA provides the Committee the following observations about the history of the program, and offers various considerations to assist the Committee in making public policy decisions about the program's future.

REVENUES AND EXPENDITURES

Since 1978, the coal industry has contributed almost $6 billion to the AML Fund. The Office of Surface Mining (OSM) reports that as of September 30, 2002 about $1.66 billion have been spent reclaiming the high priority portion (Priority 1 & 2) of the abandoned coal mined lands inventory. Another $195 million has been used to reclaim priority 3 coal sites, and $238 million for non-coal projects. Appropriations from the AML Fund for this period totaled about $4.4 billion. In other words, less than half of all the money appropriated is finding its way to onthe-ground reclamation of the inventory of coal and non-coal projects. Placed in the context of the high priority coal inventory-the principal mission of the program-about one of every three dollars appropriated from the AML Fund reaches that objective.

PROGRESS AND EXPECTATIONS

In 1986, the National Academy of Sciences (NAS) performed a mid-term review of the AML program. See National Academy of Sciences, Abandoned Mined Lands: A Mid-Course Revietiv of the National Reclamation Program for Coal (1986).* At that time, the NAS projected that by the expiration of the AML fee in 1992, total revenue for the program would reach about $3.3 billion. As it turns out, the projection was close to the mark with actual receipts reaching slightly more than $3.2 billion. NAS also found at that time that most States expressed confidence that they would complete reclamation of their priority 1 and 2 inventory of projects by 1992. Id. at 65. It was this confidence that resulted in the States' view that in the meantime they should reclaim lower priorities even before they complete the two top priorities. Id. This approach apparently had some merit since NAS projected all the states, except six, would have enough funds from their state share alone to reclaim priority 1 and 2 projects with an estimated cost of about $811 million. Moreover, the total state share alone appeared to be adequate to reclaim all priorities at an estimated cost of about $1.7 billion. Id. at 154-55. In short, at the time of the mid-term review of the program, more than ample funds appeared to be available to address not only the high priority coal inventory, but the other priorities as well.

By 1992, $870 million of the high priority coal inventory had been reclaimed. But now the target had moved, and OSM reported that the remaining high priority coal inventory was $2.6 billion almost three times the inventory reported in 1986. Since then, it appears that things have actually regressed. Since 1998, it appears that for each dollar of high priority inventory reclaimed, two dollars are added as unfunded high priorities. Now the high priority coal inventory is almost $3 billion. And, after $4.4 billion in appropriations from the AML Fund, only $1.66 billion of the high priority coal inventory has been reclaimed. Continuing business as usual would mean that it will require at least $9 billion to reclaim the current $3 billion high priority coal inventory.

STRUCTURAL IMPEDIMENTS TO SUCCESS

Twenty five years, two AML fee extensions, and almost $6 billion later, you will hear that the "job is not finished." You will also hear various viewpoints on why that is the case. We believe the answer largely lies with structural impediments in the current law related to grant formulas, competing program demands that all conspire to thwart cost-effective achievement of the program's principal purpose, and revenue allocation.

The AML Program has been called upon to serve many different demands. It has also been designed to serve those demands through multiple delivery mechanisms. We have Federal programs and State programs. And, within each of those we have special programs, such as the Rural Abandoned Mine Program, Emergency Programs, Appalachian Clean Streams Initiatives, various State Set-Aside Programs, and Technology Development and Transfer Programs. All of these programs compete for funds under various priorities and funding formulas. The first two priorities which comprise the program's core objective relate to restoring abandoned coal mine ,lands that pose dangers to the public health and safety. There is no overarching requirement that funds be directed toward the high priority coal inventory. Indeed, it appears that these other programs operate as exit ramps to divert funds away

*The review has been retained in committee files.

from the high priority inventory. And, all of these programs carry with them extensive federal and state administrative costs.

According to the OSM white paper, "The Job's Not Finished", around 1989 the demographics of coal production changed and an imbalance developed between fund availability and needs. As a result, the statutory allocation formula for AML revenue precludes the use of a substantial portion of the industry's AML fees for the high priority coal inventory. Half of all fees paid on coal production in a state are earmarked for AML use in that state regardless of the remaining high priority coal AML needs. During the early years of the program, this allocation structure posed little consequence for assuring that AML fees were available for high priority coal inventory. As coal production increased in the West with a relatively smaller coal AML inventory, a larger proportion of AML fee revenue became unavailable for high priority coal projects in other regions with a larger share of the high priority needs. OSM's recent white paper explains the consequences of this imbalance. For the first 15 years of the program, 95% of all state grants were used for high priority coal projects. However, over the past 10 years, only 64% of all state grants have been used for the program's core objective. And, this percentage will continue to decline absent changes to the law.

CONSIDERATIONS GOING FORWARD

By the time the current fee authorization expires this year, the coal industry will have paid $6.5 billion in AML fees. Simple math tells us that this sum should have been sufficient to complete both the already reclaimed and current high priority coal inventory with $2 billion to spare. Will it require $9 billion perhaps more to complete the current high priority coal inventory? The answer will depend upon choices made about whether and how the program is reauthorized. We set forth below several of the questions faced in dealing with the current program structure and requirements. Not surprisingly, each constituency will have different answers and preferences.

1. Multiple Delivery Mechanisms and Programs

Do we need-can we afford-the multiple delivery mechanisms and subprograms that divert funds away from the high priority coal inventory? RAMP is a prime example of this diversion. The program competes with state needs and has not been funded since 1996. Nonetheless, 10% of all AML fees paid annually are still allocated to RAMP which now has over $280 million allocated to that account which cannot be used for other purposes. Emergency Programs also present a duplicative system with some states assuming the responsibility, while 9 states—two of which have the most emergencies—declining to assume that responsibility as part of their approved AML programs. States still use a provision of the law added in 1990 that allows funds to be set-aside in anticipation of the fee expiring in 1995. There is something wrong with the concept of setting aside industry AML fees for future use, and then calling for the industry to keep paying because the job is not yet finished.

2. Fund Allocation and Distribution

Should the current allocation and distribution formula be replaced with a system that directs AML fee revenues to areas with the greatest need in terms of remaining high priority coal inventory? OSM's white paper indicates that the historic production (pre1977) is a close surrogate for where the high priority coal inventory sites are located. If such a change is made, what happens to the current allocations? States that have completed their high priority coal inventory may feel that they should receive some portion or all of the unexpended balances in their accounts. Distribution of those amounts will affect funding requirements. For example, the unexpended state share for the certified states comprises 30% of the unappropriated AML balance. The allocation and distribution issues present the most fundamental question: Does coal AML remain a national problem that still requires a national solution? If so, should the solution be administered in a manner more fitting and efficient for a national problem?

3. Adhering to Priorities

What good are priorities if there are so many and there is not an overarching requirement to abide by them? Presently, the law sets out no less than five priorities ranging from the protection of the public health and safety from extreme dangers posed by abandoned coal mined lands to the development of land. There is no requirement that AML fees be used first for the top priority before moving on to lower priorities. In at least two states, the amount of AML fees used to reclaim priority 3 areas either approximates or exceeds the amount spent to reclaim priority 1 and 2 areas. In each case, the amounts spent in these states for priority 3 projects would

have been more than enough to finish their current unreclaimed priority 1 and 2 inventories.

4. The Inventory

Does the high priority coal inventory serve as a benchmark for measuring progress and success? Each time it appears the goal becomes closer, the goal line is moved further.away. In 1998, the remaining high priority coal inventory was less than $2.5 billion. In 1999, the inventory swelled by an additional $3 billion as a result of a state-which already accounted for one-third of the inventory-moving up lower priorities to the priority 1 and 2 inventory. But even when that inexplicable swelling is removed, the inventory continues to grow by about $2 for every $1 dollar of high priority coal reclamation. To some, the inventory has transformed itself from a management tool to a funding gimmick to establish the AML program as a permanent fixture. Some suggest that the inventory should be frozen to avoid this temptation and provide focus and discipline for future expenditures.

5. Administrative Costs

How much do we need to spend in order to spend? A General Accounting Office (GAO) report found that between 1985-1990 $360 million, or 28%, of the $1.3 billion spent during that period was used for Federal and State administrative expenses. General Accounting Office, Surface Mining. Management of the Abandoned Mined Land Fund (July 1991). But even this amount may understate the percentage of funds used for administration since, as GAO noted, some States incorporate administrative expenses into their construction grants that are counted as reclamation project costs. As for Federal expenses, GAO reported that during that period OSM spent $137 million for administration while using about $100 million for reclamation projects. We are not aware of any single source of information tracking the amount of AML fees used for administration. But piecing together various sources related to AML program performance suggests that over $1 billion has been spent to administer the program.

6. The AML Fee

What should the levels of the fee be and how much more can or should the coal industry pay into the AML fund? The job may not be finished, but the lack of AML fees is not the reason. The amount the coal industry receives for each ton of coal it sells has declined since the fee's inception, annual AML fee revenue continues to increase substantially with the rise in coal production. This is because the AML fee rates remain constant for each ton of coal. When the AML fee was being debated in the late 1970s, coal prices were forecasted to exceed $50/ton, and it was believed that the AML fee would be a nominal tax, at most. In 1982, the average nominal price of coal nationwide was $27.25/ton ($41.13 in 1996 dollars). In 2002, the average price of coal was about $17.80/ton ($16.08 in 1996 dollars).

Once again, NMA appreciates the opportunity to present its observations on the history of the AML program. We hope the various considerations will assist the Energy and Natural Resources Committee as it addresses the public policy decisions inherent in coal AML program.

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