S. HRG. 109–256

AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

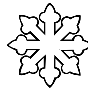
S. 961

A BILL TO AMEND THE SURFACE MINING ACT OF 1977 TO REAUTHORIZE AND REFORM THE ABANDONED MINE RECLAMATION PROGRAM, AND FOR OTHER PURPOSES

S. 1701

A BILL TO AMEND THE SURFACE MINING ACT OF 1977 TO IMPROVE THE RECLAMATION OF ABANDONED MINES

SEPTEMBER 27, 2005



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AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

TUESDAY, SEPTEMBER 27, 2005

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

The committee met, pursuant to notice, at 10 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. Let's call the committee to order. Mr. Domenici asked me to preside and get us going here. He may show up somewhat later. I hope so.

I want to thank you all for being here. This is a continuing issue with us, of course, the AML reauthorization. We've been through it several times, and I'm, frankly, pleased that we are here. I hope that we can, this time, come up with a program to renew, and not simply extend it through authorization of the appropriations, as was the done the last time.

So, that's why we're here. Of course, the Abandoned Mine Land Reclamation has resulted in the cleanup of some of the Nation's worst abandoned coal mines. As you know, the program is funded through a fee on nearly every ton of coal. The existing law has always credited half of the fees to the States and the Indian tribes and half to the Federal Government. Currently, the AML fee is scheduled to expire on June 30, 2006. So, there are some time constraints.

It's important to remember that the reclamation program does not retire at that time. A common misconception exists that the reclamation program ends. It's only an affirmative action by Congress that would end reclamation. Reclamation of abandoned coal mines is important, and I will oppose any legislation initiative to terminate that program. In fact, I believe more money should be directed to the program. I'm not convinced, of course, that others all share this view.

We must take a look at the current AML Trust Fund account balance to understand how I came to this conclusion. As of July 1, 2005, the Reclamation Fund held $1.7 billion of unappropriated funds. Under existing law, of the more than $1.7 billion already collected and held in trust, $1.1 billion is due to the States and the Indian tribes. Under existing law, my State of Wyoming is owed more than $450 million.

The release of these funds over the last quarter century would have had a tremendous impact on the communities throughout the United States. It's frustrating for all of us—the States and the tribes—to see so much money available, yet untouchable.

The bill I introduced 2 weeks ago, in addition to returning the money to the States and the tribes, extends the AML fee for an additional 10 years, ensuring the money continues to flow into this worthwhile program. My proposal also contains a mechanism that would allow the States and the Indian tribes more timely access to their share of the AML fee. And I recognize that my proposal is not as comprehensive as some others that have been circulated. It does not address the issues related to healthcare. It does extend the existing program. Before creating new obligations, we must ensure that the existing programs are being honored.

So, we are committed to finding a solution, even though there are different ideas. Whatever the solution, it will require a compromise, of course. And, therefore, we're here to seek to deal with this issue.

[The prepared statements of Senator Santorum and Talent follow:]

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

Mr. Chairman, my strong support for the reauthorization of the Abandoned Mine Land (AML) fund brings me to submit this statement for the Committee's record.

Since its inception, the AML fund has provided a valuable resource in the cleansing of our nation's streams and lands in the wake of mining exploration. My home state of Pennsylvania, in fact, has the most abandoned mine land sites in the nation and has utilized the Fund to improve the quality of our environment. It is evident that more needs to be done to fix this problem.

I am proud to represent the Commonwealth of Pennsylvania that has been one of our nation's leaders in the reclamation of abandoned mine lands. Pennsylvania has been working hard to reclaim its abandoned mines and has completed hundreds of stream pollution abatement projects. Despite the successes seen through the implementation of Pennsylvania's initiatives, there is a clear necessity to reauthorize the federal AML fund. According to the National Abandoned Mine Land Inventory, my home Commonwealth of Pennsylvania has over $1 billion worth of Priority 1 and 2 abandoned mine land sites.

These statistics should not come as a surprise to your committee. As you are aware, AML problems are primarily located in states with high historic production. Historic production records show that the eastern United States accounts for 94 percent of all of the country's AML problems. Pennsylvania is no exception. The pressing situation facing our state today is that one-third of all national 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.

I recognize the difficulty in assessing and properly allocating funds to address all of our nation's AML sites. However, I believe that across the nation and especially in Pennsylvania, there is a pressing need to more equitably shift the funding priority from current production sites to historic production sites. This would ensure that all abandoned mines could begin to be restored and re-utilized in an environmentally friendly and expeditious manner.

While the economic costs associated with reclaiming AML sites has increased, the human toll has also mounted in recent years. Because of the prevalence of AML sites throughout our nation, deaths associated with these sites have been far too commonplace. Last year, in Pennsylvania alone, five fatalities were associated with AML sites. In my opinion, this is five too many.

Given the large-scale damage and dangers experienced by my constituents, I believe it is essential that the reauthorization of the AML fund protect coalfield communities and restore damaged natural resources. It is my great hope that the experiences of my constituents and the coal-mining heritage of my Commonwealth will

weigh heavily as your committee continues the process of reauthorizing the AML fund.

For these reasons, Mr. Chairman, I am pleased that you and your committee have taken up this important issue nearly a year before the fund expires. I look forward to working with you and your committee as this progress continues. As the mining legacy in my home state shows, AML sites impact the safety of communities, affect environmental quality, and hinder economic progress. It is essential to my Commonwealth and my constituents that we extend and reform the abandoned mine land reclamation program for the safety of our nation, the safety of our environment, and the safety of our economy.

PREPARED STATEMENT OF HON. JAMES M. TALENT, U.S. SENATOR FROM MISSOURI

AML is a worthy and important program that we need to continue.

But we need to find a way to do it that addresses all of the myriad of issues comprehensively and not in a piecemeal fashion, and we need to do it in such a way that provides balance between the States and certainty without excessive cost or a changing of the financial expectations of the mine workers and their survivors.

I appreciate Sen. Thomas's efforts to fix a flaw in the administration of the AML fund—we should keep our promise and return to the States that paid the AML fees the amounts the law says should be returned (50%). That's fair.

We also should make sure that the fees are not overly burdensome. But I think we need a more comprehensive solution.

We're trying to do a lot more with the AML funds with respect to retiree health benefits than was envisioned in 1992. There are a lot more "orphaned" retirees in the program than was originally envisioned.

There's also a lot more in the way of projects being done that are beyond the core mission of reclaiming pre-1977 abandoned mines. These things are good and helpful, but it seems that we will never complete the job we started in 1977.

It also seems to me that there should be some finality to the program, both with respect to the pre-1977 priority reclamation sites and with respect to the inclusion of retirees to be paid for by the fees. It seems we have a moving target as to the total reclamation costs, one that seemingly we will never reach.

In his prepared testimony, Mr. Finkenbinder points out the poor history of estimates of reclamation costs and their eventual cost, noting that in 1986 we expected to pay for all of the top priority projects ($811 million) by 1992. But in 1992, we had spent $870 billion on high priority projects and yet the remaining projects were now estimated to cost $2.6 billion. Now the inventory of reclamation projects is up to nearly $3 billion, and this after $8 billion in fees have been recovered. And yet we seem to be no closer to solving the problem.

Mr. Chairman, I would like to submit for the record a letter I received from a number of coal companies, mine workers and other coal interests. It includes a proposal that attempts to comprehensively address funding for all of the reclamation and retiree health benefit issues we are dealing with here. I appreciate the attempt, but at a cost of $3.1 billion, I think it may be too costly.

We need to find another way of addressing these issues comprehensively. Nevertheless, this compromise proposal will inform our debate and may lead us to a better solution that addresses the needs of all interested parties.

Let me call on the Senator from New Mexico.

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

Senator BINGAMAN. Thank you very much, Mr. Chairman, for having the hearing. I think this is a very useful way for us to begin serious deliberation in this Congress on this issue.

This Abandoned Mine Land Program that was started in 1977 is very important. The work of the program is far from completed. The Office of Surface Mining estimates that there are $3 billion worth of priority-one and -two problems that threaten public health and safety and $3.6 billion worth of general welfare problems that remain un-reclaimed.

In my home State of New Mexico, according to OSM's data, there is still coal-related work to do. There are dangerous piles and em-

bankments to remediate, hazardous waters to reclaim, and vertical mine openings to close. In addition, the Surface Mining Act allows AML funding to be used to remediate not only abandoned coal mines, but also, importantly, abandoned hard-rock mine sites, in certain circumstances.

I understand that non-coal reclamation work is also important on several Indian reservations, including the Navajo Reservation. I want to ensure that funding for this important non-coal work is also continued.

In 1992, interest from the AML Fund has served as a source of revenue to address another very crucial issue, and that is coal-miner retiree health benefits. Providing such benefits presents an ongoing and a difficult issue for us here. The legislation before the committee today addresses this issue. I'm obviously interested in ensuring that we do right by these retired coalminers, and I look forward to hearing from witnesses for the United Mine Workers of America and the UMWA Health Benefits Fund.

The issue of crucial importance to this bill involves the Indian tribes. Absent from the bills is a provision to allow tribes to be granted primacy for the regulatory program under title 5 of the Surface Mining Act. I believe this change in law is long overdue. I appreciate President Shirley, of The Navajo Nation, being here today to testify on this and other aspects of the legislation.

This is an important issue for our States, for Indian tribes. It's also an important national issue. I think it is imperative that Congress take action to extend the authorization and collect the coal reclamation fee before that authority expires.

So, again, thank you for having the hearing.

Senator THOMAS. Thank you, sir.

The Senator from Idaho.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Well, thank you very much, Mr. Chairman.

Your legislation, and that introduced by Senator Rockefeller, are the two pieces we're looking at today, and I thank you for getting in front of the expiration date by nearly a year to examine this and move this committee, with its authority, in the right direction to deal with reauthorization.

Obviously, I, personally, from a State standpoint, don't have a dog in this fight. You have a $450 million dog. By Wyoming or Idaho standards, that's a big dog. And I think that's something that has to be recognized, that we don't just buildup large funds that the Federal Government can use for budgetary purposes, but they move in the direction they were intended to move.

I've also looked at—and I know that it is not in the jurisdiction of this committee—the issue of reach-back and super-reach-back. That's a Finance Committee issue, I believe. I know that Senator Talent and Senator Bunning are interested in that. And I, too, am interested in that, to try to get that resolved. But I hope this hearing allows us to move forward and to reauthorize, in a timely manner, this important legislation.

I also note that your legislation probably expedites the issue of the unappropriated funds as it relates to States, and allows that

to return to States more quickly, as it should. And I'm supportive of your effort there.

So, I'm here to listen this morning, and gain more information on the issue.

Thank you.

Senator THOMAS. Thank you, sir.

And thank all of you who have come to testify today. It's very important that we hear from you and hear the specific concerns and information that you have.

I am especially pleased, of course, to have Mr. Green here, from Wyoming, and thank you, sir.

On our first panel, we have Mr. Thomas Shope, Chief of Staff, Office of Surface Mining, U.S. Department of the Interior; Mr. Joe Shirley, Jr., president, The Navajo Nation, Window Rock, Arizona; Mr. Evan Green, administrator, Abandoned Mine Lands Division, the State of Wyoming, Cheyenne, Wyoming; Mr. Steve Hohmann, director, Division of Abandoned Mine Lands, State of Kentucky.

Gentlemen, welcome. Your full statement will be put into the record, and if you could summarize your statement in about 5 minutes, why, that would help us get through our work, and then we'll have an opportunity to ask questions.

So, Mr. Shope, if we may begin with you, sir.

STATEMENT OF THOMAS D. SHOPE, CHIEF OF STAFF, OFFICE OF SURFACE MINING, U.S. DEPARTMENT OF THE INTERIOR

Mr. SHOPE. Thank you, Senator.

Mr. 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's authority to collect the abandoned mine-land fee.

I'd like to thank Senator Thomas for introducing his bill, S. 1701, as well as Senator Rockefeller for introducing his bill, S. 961. We applaud the efforts of these sponsors seeking to reauthorize OSM's authority to collect the AML fee and to make positive changes to this important program.

As we enter the third year of this reauthorization effort, it's important to keep in mind that there are an estimated 3.5 million Americans who live less than one mile from a dangerous high-priority abandoned mine site. The lives, health, and safety of these citizens are threatened daily by these sites. People are frequently injured, and too often die, as a result of the hazards of abandoned coal-mine lands.

The administration believes that the AML problem is a national problem that calls for a national solution. The administration believes AML funding needs to be focused on the areas most damaged by this Nation's reliance on coal for industrial development and wartime production that occurred long before the establishment of reclamation requirements in the Surface Mining Control and Reclamation Act. The AML problems that currently exist in so many States are directly related to a State's historic coal production. Focusing the future distribution of fees based on historic production will put more money where the problems are, where it is most needed.

As you consider the proposals that have been advanced to address these needs, the administration urges that you consider some fundamental principles that we believe should be reflected in any legislation seeking to reauthorize AML fee-collection authority.

We believe that any proposal should expedite the cleanup of high-priority health- and safety-related abandoned coal mines, should provide for the expedited payment of unappropriated State-share balances to certified States and tribes, and should do so within the President's mandatory and discretionary spending limits.

To honor these principles and finish the job, legislation must strike a balance that addresses both the ongoing problems faced by States with high-priority coal-related health and safety issues, while not placing it—at a disadvantage those States and tribes where the majority of fees are currently generated.

The introduction of S. 1701 and S. 961 show a continued commitment by Congress to reach resolution of the issues under debate. I think all of us share a commitment to reform OSM's fee-collection authority to fulfill our mandate to address high-priority health and safety concerns, and to do so in a manner that directs the funds to the States and tribes where they are most needed.

The administration supports the proposed elimination of the AML allocation for the RAMP program found within S. 1701 and S. 961 and the reallocation of those fees for high-priority needs. However, under the allocation structures of both proposals, at the fee rate and collection periods proposed, we believe an insufficient amount of funds will be collected and available to finish the job of reclaiming the high-priority health and safety coal sites on the current inventory.

The administration also supports the principle of honoring the commitments made to States and tribes under the current law through the expedited payment of unappropriated State-share balances. In fact, the administration proposed additional funding in its fiscal year 2005 and 2006 budgets to provide for, among other things, the accelerated return of State share. However, we believe the proposed repayment plan in S. 1701, including provisions for mandatory spending, is not consistent with the administration's budget and program priorities.

We have submitted written testimony that more fully explains the administration's views on the problems with the current AML distribution, as well as analysis of the individual provisions of the bills under consideration. We believe the introduction of S. 1701 and S. 961 signal the continuation of constructive efforts and a productive discussion to amend and reform the AML program.

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 before the looming expiration date. We recognize that these issues can be contentious. But those of us at the Office of Surface Mining are eager to continue working through them with the committee.

Once again, we thank the committee for this opportunity to present the administration's views on these important legislative proposals.

[The prepared statement of Mr. Shope follows:]

PREPARED STATEMENT OF THOMAS D. SHOPE, CHIEF OF STAFF, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, U.S. 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. I would like to thank Senator Thomas for introducing his bill, S. 1701, as well as Senator Rockefeller for introducing his bill, S. 961. We applaud the efforts of these sponsors seeking to reauthorize OSM's authority to collect the AML fee, set to expire on June 30, 2006, and to make positive changes to this important program. We look forward to working with the Senate on the important issues surrounding the collection and use of the AML fee.

As we enter the third year of this reauthorization effort, it is important to keep in mind that there are an estimated 3.5 million Americans who live less than one mile from a dangerous, high-priority abandoned mine site whose lives, health and safety are threatened daily by these sites. People are frequently injured and too often die as a result of the hazards of abandoned mine lands.

The Administration believes that the AML problem is a national problem that calls for a national solution. The Administration believes AML funding needs to be focused 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.

The Administration supports the repayment of the unappropriated balances for certified states. However, we cannot support creating new mandatory spending programs with which to make such repayment. Moreover, while the allocation formula has improved, neither proposal would adequately expedite the cleanup of high priority lands, and therefore the Administration cannot support the allocation provisions as drafted. For the reasons noted here, we cannot support the bills as drafted; however, we would like to work with the Committee to reach an agreeable solution.

BACKGROUND

Since the enactment of the SMCRA by Congress in 1977, the AML program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans. Specifically, more than 285,000 acres of abandoned coal mine sites have been reclaimed through $3.5 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 in construction costs alone are needed to reclaim the high priority health and safety coal related problems remaining.

Even if we were to use all of the AML fees collected between now and June 30, 2006, the date the fee collection authority is scheduled to expire, as well as the unappropriated balance of $1.6 billion, we would still have insufficient funds to address the health and safety-related surface mining problems in part because of the fund's current distribution formula. Even under a simple extension of the current law and the current distribution formula, it would take non-certified states an average of 47 more years to complete reclamation. In some cases, remediation could take nearly a century.

We do not believe the current allocation system will enable us to complete the job of reclamation in the most efficient way we believe Congress intended. We view the expiration of the current AML fee collection authority as an opportunity to reform the AML program 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 production in any one state is allocated to an account established for that state. Like-

wise, 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% of the 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 it is 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 believes any legislation seeking to reauthorize the AML fee collection authority must reflect the following principles:

- Expedite the cleanup of high priority heath and safety abandoned coal mines.
- Provide for the expedited payment of unappropriated balances to certified States and Tribes.
- The total cost must not exceed the President's Budget and must not include mandatory funding.

These principles 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. In light of those principles, we offer the following analysis of the key elements of the bills under consideration by this Committee.

BILL ANALYSIS

There are three factors that must be considered in order to complete high priority work; the fee rate, the length of time authorized to collect the fee, and the way the money is allocated toward high priority reclamation or other uses.

FEE ALLOCATIONS

Both S. 1701 and S. 961 would continue the current practice of allocating 50% of the fees collected in a state to that state or tribe's "State-share" or "tribal-share" account, without regard to that state or tribe's coal reclamation needs.

S. 1701 would add a new provision requiring that all aggregate unappropriated State-share and tribal-share balances (as of October 1, 2006) be returned to those States and Indian tribes between December 31, 2006 and December 31, 2010. The schedule and amount to be paid each year would be dependent upon the total State-

share balance with larger balances requiring a longer payout period. These payments would not be subject to Congressional appropriation.

While the Administration agrees with the principal of honoring the commitments made to states and tribes under the current law, and has proposed additional funding in its FY 2005 and FY 2006 budget to provide for, inter alia, the accelerated return of State-share, the Administration cannot support the proposed repayment plan including provisions for mandatory spending because it is not consistent with the Administration's budget and program priorities.

Both S. 1701 and S. 961 would increase the percentage of funding that goes towards the historical production allocation, and thereby accelerate the cleanup of high priority sites by discontinuing the RAMP allocation and increasing the historical production (that portion distributed based on need) allocation from 20% to 30% of the AML fee revenues.

The Administration supports the elimination of the AML allocation for the RAMP program and the reallocation of those fees for high priority needs

AML RECLAMATION FEE RATES/LENGTH OF COLLECTION PERIOD

S. 1701 modifies reclamation fee rates with stepped decreases through the life of the extension to September 30, 2016, a 10 year extension. An estimated total of $2.8 billion would be collected over the life of this proposed extension.

S. 961 maintains the fee rates currently established by law but extends the OSM's authority to collect those fees through 2019, a 13 year extension. An estimated total of $4.4 billion would be collected over the life of this proposed extension.

As previously indicated, under the allocation structures of both proposals, at the fee rate and collection periods proposed, an insufficient amount of funds will be collected and available to finish the job of reclaiming the high priority health and safety coal sites on the current inventory.

UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND (CBF)

While providing health care benefits is not part of OSM's mission, providing for the transfer of funds to the CBF, equivalent to the amount of interest earned on the AML fund, is an important obligation. Both S. 1701 and S. 961 honor the commitments made to the 16,500 unassigned beneficiaries of the CBF under current law by maintaining these transfers including the assignment of interest "stranded" from prior years. S. 1701 also adjusts the annual cap on transfers to the CBF from the amount of estimated AML fund interest earnings during the current fiscal year to the amount of interest actually earned during the prior fiscal year.

S. 961 expands the obligations of the interest transferred to include two additional UMWA plans. Interest would be made available for UMWA plans in the following order of priority: the CBF, the 1992 Plan, and the 1993 Plan. In addition, any unappropriated balance of the RAMP allocation would be available for these transfers, beginning with FY 2004. The Administration does not support paying benefits for additional beneficiaries, beyond the unassigned beneficiaries in the CBF, out of the AML fund.

MINIMUM PROGRAM FUNDING

Both S. 1701 and S. 961 provide that no State or tribe with an approved AML program would receive an annual grant of less than $2 million. This provision would ensure that States and tribes with relatively little historic production would receive an amount conducive to the operation of a viable reclamation program. The Administration is concerned about provisions in both bills that add 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. The precedent of allowing a non-primacy state to receive AML grants could have a detrimental effect on the overall state-federal primacy scheme which has proven to be an effective method of surface mining regulation. Furthermore, both proposals call for removing current provisions which restrict the granting of funds to minimum programs based upon need. This removal would result in a further diversion of needed funds from either the historical production account or the federal operations account. In order to ensure that efforts focus on priority sites, the Administration would prefer to see this minimum restricted to states with high priority problem sites.

REMINING

Both bills take a positive step in reinstating remining incentives which have now expired. These incentives provide reduced revegetation responsibility periods for re-

mining operations and an exemption from the permit block sanction for violations resulting from an unanticipated event or condition on lands eligible for remining. S. 1701 also 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.

AML RECLAMATION PRIORITY

Both bills impact a state's or tribe's autonomy to make expenditures from the AML fund on eligible lands and water for coal-related sites by altering the current priority structure. Both S. 1701 and S. 961 amend the current priority system to eliminate the general welfare component of priorities 1 and 2, leaving public health and safety as the principle elements of those priorities. S. 961 takes an additional step of requiring a scrub of the AML inventory to eliminate all general welfare entries since 1998. S. 1701 proposes adding environmental restoration of adjacent lands to the P1 category.

S. 1701 and S. 961 both require that priority 3 environmental work be undertaken only if it is incidental to a priority 1 or 2 project. Finally, S. 961 eliminates the P4 and P5 priorities, which relate to construction of public facilities and development of publicly owned land.

Both S. 1701 and S. 961 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. Removing the cap is consistent with the 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.

ACID MINE DRAINAGE SET ASIDE

Both S. 1701 and S. 961 modify the existing provision in SMCRA that allows States to set aside ten percent of grant awards made from their State-share and historical production allocations. Both bills eliminate the option to place those monies in a special State trust fund for use for AML reclamation purposes. Both bills also propose streamlining the requirements for the placement of those monies into accounts for the abatement and treatment of acid mine drainage. S. 1701 calls for increasing the percentage of grant awards that may be set aside in these accounts from 10% to 20%.

STATE COLLECTION OF AML FEES

S. 1701 adds a new section to SMCRA to allow States and Indian tribes the ability to collect reclamation fees and retain half of the fees collected in lieu of receiving a State-share allocation. As proposed, a State or tribe has the option to collect the AML fee, retain 50% and provide the remaining 50% to the Secretary of the Interior. States and tribes would have to use the retained funds for the purposes and priorities established under the AML program. The Administration has concerns regarding this provision. First, the OSM is very proud of our 99.9% collection rate of AML fees. This achievement is the result of our employee's years of experience and expertise as well as an efficient infrastructure to support the collection of these fees. The efficacy and cost of having 26 different agencies collecting and processing AML fees, in addition to maintaining the federal infrastructure to collect and account for the fees submitted to it, is a substantial issue of concern. In addition, issues of equity arise over the inability of smaller AML programs to staff and maintain this collection function as compared to programs with larger revenue and capacity. Finally, the constitutionality of a state or tribal AML program collecting the federally imposed AML fee is an unanswered area of concern.

COST

The Administration is concerned about the cost of both S. 1701 and S. 961. As discussed above, the Administration believes any bill to reauthorize the AML should not exceed the cost assumed in the President's budget.

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.

We believe the introduction of S. 1701 and S. 961 signal the continuation of constructive efforts 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 on June 30, 2006. 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 recognize that these issues can be contentious, but we are eager to continue working through these issues with the Committee. We look forward to an open and productive dialogue 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.

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. Okay. Thank you, sir. Appreciate it.

Mr. Shirley.

STATEMENT OF JOE SHIRLEY, JR., PRESIDENT, THE NAVAJO NATION, WINDOW ROCK, AZ

Mr. SHIRLEY. Thank you, Chairman Thomas, Senator Bingaman, committee members. Thank you for the opportunity to testify before you this morning on the Surface Mining Control and Reclamation Act of 1977.

The Surface Mining Control and Reclamation Act of 1977 is tremendously important to The Navajo Nation and the Navajo people. SMCRA has allowed The Navajo Nation to clean up most of the environmental and physical hazards presented by the 1,300-plus abandoned mine lands that exist on Navajo land.

As a certified tribe, The Navajo Nation has also used funds from the Abandoned Mine Land Trust Fund for Public Safety Infrastructure Projects, or PFPs. These projects, entirely within the scope of SMCRA, allow certified States and tribes to address the many impacts to communities caused by past and present mining activities. The Navajo Nation believes it is essential to maintain SMCRA and the AML fee to provide essential cleanup of abandoned mines and rehabilitation for communities affected by mining.

Mining companies have reaped the benefits of Navajo coal for decades, but have given so little back to the communities which have been affected by their activities. They have polluted our water, soil, and air, and have not rectified the communities or the sites they have disturbed when the leave.

The issue of abandoned mines is more than just a problem with the mines themselves, although the environmental and physical hazards posed by many of the mines are severe. The problem is: How do you put communities back together when the mining companies simply walk away?

SMCRA benefits a way—presents a way of helping these communities. Through the AML fee collection, The Navajo Nation has contributed approximately $186 million to the AML Trust Fund, of which our nation has been entitled to an estimated $93 million. The Navajo Nation's total expenditure of the AML funds for reclamation and other projects is approximately $62 million.

Since 1994, The Navajo Nation has been a certified tribe, meaning that it has completed the rehabilitation of its abandoned coal mines and is now allowed to use its tribal share of the reclamation

fee for PFPs to help communities that are impacted by mining activities, pursuant to section 411 of SMCRA.

The Navajo Nation currently has an unappropriated AML Trust Fund balance of approximately $32 million that the U.S. Office of Surface Mining and Reclamation Enforcement has not yet disbursed. This is a small fraction of the overall balance of the AML Trust fund. But, for The Navajo Nation, the rightful disbursement of this money represents a tremendous opportunity to help the Navajo people that have been affected by coal-mining activities.

The Navajo Nation encourages the committee to increase, or at least continue, the allocation of the reclamation fee collected annually to the tribes, under section 402(G)(1)(b); promptly disburse the unappropriated AML Trust Fund balances of States and Tribes; extend the expiration date for the reclamation fee beyond September 2018; continue to allow the flexibility to allow certified States and tribes to spend AML funds pursuant to the goals and objectives of SMCRA; allow The Navajo Nation the opportunity to apply for primacy under title 5, subject to applicable SMCRA regulations.

First, The Navajo Nation requests that the committee increase and/or continue the allocation of the reclamation fees collected annually to the tribes under section 402(G)(1)(b). The Navajo Nation opposes any amendment to section 402(G)(1)(b) that will deny us our allocation and divert it to States which have not yet completed reclamation activities. This would effectively penalize The Navajo Nation for taking the responsibility to reclaim the most hazardous and harmful mines on Navajo land. 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-facility projects. These projects help build infrastructure such as roads, waste management systems, and water services. We desperately need our allocation of the reclamation fees, and urge the committee to raise the tribal share of the reclamation fee so we may confront our infrastructure problems.

At the very least, we recommend that tribes continue to receive the 50-percent allocation currently authorized by SMCRA.

Second, The Navajo Nation requests that our unappropriated balance of approximately $32 million be promptly released. We seek the expeditious return of our Trust Fund balance while remaining an active participant in SMCRA.

Third, The Navajo Nation requests that the reclamation fee expiration date be extended to at least September 2018. We believe that this will allow OSM enough time to clean up priority sites and meet the goals of SMCRA.

Finally, The Navajo Nation requests that the tribes participating in SMCRA be treated on equal footing with the States and become eligible to apply for tribal primacy under title 5 of SMCRA. We believe that Congress originally intended SMCRA to treat Indian tribes as States are treated in regards to regulating mining activities.

The Navajo Nation is ready to assume primacy over the regulation enforcement of coal mining on our land.

In closing, The Navajo Nation has long supported reauthorization of SMCRA. The AML fee allocation provides an important opportunity for The Navajo Nation to not only finish the last of the rec-

lamation activities, but also to continue the PFPs to help those communities impacted by mining.

The Navajo Nation has strongly supported the release of the unappropriated Trust Fund balance and the ability to collect our own AML fees. While The Navajo Nation is encouraged by the efforts of Senator Thomas in S. 1701 to address the concerns of the AML program, we urge the committee to include the primacy provisions in their legislation to ensure that The Navajo Nation will have the ability to be treated like States and determine for itself how it will manage its own surface mining and reclamation activities.

Thank you for the opportunity to provide this testimony to the committee.

[The prepared statement of Mr. Shirley follows:]

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

INTRODUCTION

Thank you for the opportunity to submit this testimony for the record concerning the Navajo Nation's position on the reauthorization of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95-87. The purpose of this hearing is to discuss two pieces of legislation that address SMCRA; S. 1701 and S. 961 both titled the "Abandoned Mine Land Reform Act of 2005." I would like to discuss the position of the Navajo Nation regarding SMCRA reauthorization in general, the beneficial uses of the Abandoned Mine Land (AML) funds, and the expansion of SMCRA to allow the Navajo Nation to finally apply for the ability to regulate mining activities on Navajo land.

The Navajo Nation is the largest federally recognized Native American Tribe in the United States with close to 300,000 Tribal members, and a sovereign territory roughly equivalent in size to the State of West Virginia. The Navajo Nation is one of three coal-producing Tribes in the country along with the Hopi Tribe and the Crow Tribe. While the Navajo Nation has benefited financially from mining on our lands, we have also experienced the negative effects of what mining has left behind. As companies folded their mining operations, many of them simply removed their machinery and left open scars behind. Each abandoned mine presents a physical and environmental, and in some cases a radiological, hazard for the Navajo people and our land.

Mining companies have reaped the benefits of Navajo coal for decades to fuel coal-fired power plants that have aided the rapid expansion of the American Southwest. While the coal mining companies and the power plant operators have earned tremendous profits, and the economies of Phoenix, Albuquerque, and Las Vegas, among other population centers, have boomed, the Navajo Nation, the home to this precious resource continues to exist in a condition that most Americans would find deplorable. The majority of Navajo people live without the modern conveniences of electricity, running water, and sewage systems. The unemployment rate on the Navajo Nation hovers around 50%, while the poverty rate is approximately 56%. The State of West Virginia, which as noted earlier is approximately the same size of the Navajo Nation, has 18,000 miles of paved road; the Navajo Nation has only 2000 miles of paved roads.

The reason for presenting these statistics to you today is less to use this hearing as an opportunity to illustrate the dire situation faced by so many Navajos, but to point out that the companies that have for decades come in and taken our coal have given so little back to the communities which have been affected by their activities. They have polluted our water, soil, and air, and have done little to rectify the communities or the sites they have disturbed when they leave. The issue of abandoned mines is more than just a problem with the mines themselves, although the environmental and physical hazards posed by many of the mines are severe, the problem is how do you put communities back together when the mining companies simply walk away?

SMCRA presents a way of helping these communities. Through the AML fee collection the Navajo Nation has contributed approximately $186 million to the AML Trust Fund, of which the Nation has been entitled to an estimated $93 million. The Navajo Nation's total expenditure of AML funds for reclamation and other projects is approximately $62 million. Since 1994, the Navajo Nation has been a certified Tribe, meaning that it has completed the rehabilitation of its abandoned coal mines

and is now allowed to use its Tribal share of the reclamation fee for Public Facility Infrastructure Projects (PFPs) to help communities that have been impacted by mining activities pursuant to §411 of SMCRA.

The Navajo Nation currently has an unappropriated AML trust fund balance of approximately $32 million that the U.S. Office of Surface Mining Reclamation and Enforcement (OSM) has not yet dispersed. This is a small fraction of the overall balance of the AML Trust Fund, but for the Navajo Nation the rightful disbursement of this money represents a tremendous opportunity to help the Navajo people that have been affected by coal mining activities. No one would argue that the AML Trust Fund has been dispersed efficiently, but it is essential to the Navajo Nation that this fee continues and that the Navajo Nation be allowed to use its Tribal share to further develop these PFPs.

THE NAVAJO NATION POSITION IN BRIEF

In recognizing the importance of the reauthorization of SMCRA to the Navajo people, the Intergovernmental Relations Committee of the Navajo Nation Council approved a resolution asking Congress to:

1. Increase, or at least continue, the allocation of the reclamation fee collected annually to the Tribes under §402(g)(1)(B);
2. Promptly disburse the unappropriated AML Trust Fund balances of States and Tribes;
3. Extend the expiration date for the reclamation fee beyond September 2018;
4. Continue to allow the flexibility to allow certified States and Tribes to spend AML funds pursuant to the goals and objectives of SMCRA;
5. Allow the Navajo Nation the opportunity to apply for primacy under Title V, subject to applicable SMCRA regulations.

DISCUSSION

Reauthorization

The Navajo Nation urges the Committee to move quickly to reauthorize SMCRA. While the program has been criticized for how it has released the funds to which States and Tribes are entitled, and for amassing such a large balance in the AML Trust Fund, currently at almost $2 billion, the program itself is well designed in concept if not in application. Throughout the country, thousands of dangerous abandoned mines and impacted communities that have been affected by mining activity. The portion of the AML fee that the federal government retains for its own uses provides the best way to encourage current mining companies to rectify the activities of past mining where there is little current mining to generate the fees necessary to mount a successful rehabilitation. Similarly, the portion of the AML fee that is supposed to be returned to the States and Tribes allows those sovereign entities to clean up the past and present impacts of mining. The Navajo Nation applauds the work of the Committee to streamline the AML program and to continue this rehabilitation opportunity so vital to the health and well-being of the Navajo people.

AML Fee Collection

The Navajo Nation urges the committee to increase, or at least continue, the collection and allocation of reclamation fees. The AML fee collection and Tribal share allocation provide an important resource for the Navajo Nation to continue the clean up of abandoned mine lands and the rehabilitation of communities impacted by past mining. Since the inception of this program, the Navajo Nation has reclaimed over 1,300 mine sites and addressed many of the physical and environmental hazards posed by these sites. In 1990, SMCRA was amended to allow the use of the Tribal share to reclaim abandoned uranium and coppermines where they constitute a hazard to public health and safety, and to facilitate land and water projects and public facility projects in areas impacted by mining activities. In order to use these funds for projects other than abandoned coal mine lands, a State or Tribe must be certified that it has completed its coal mine clean up. The Navajo Nation received its certification in 1994. Since that time, in compliance with §411 of SMCRA, the Navajo Nation has used the AML funds to aid communities impacted by past or present mining through a competitive proposal process. If the project is approved, the Tribal share allocation is used to leverage further financing for the construction of infrastructure projects such as roads, electrical power lines, waste management, and municipal water systems.

The Navajo Nation will strongly support legislation that increases or continues the reclamation fee and continues the ability of States and Tribes to use the State or Tribal share for the clean up of abandoned mine lands and PFPs. The Navajo

Nation opposes any attempt to change §402(g)(1)(B) to no longer allow a certified State or Tribe to receive its 50% allocation and divert this money to States or Tribes that have not completed their reclamation activities. A change of this sort would essentially punish the Navajo Nation for quickly and efficiently reclaiming its abandoned mine lands and receiving its certification status.

The Navajo Nation desperately needs the allocation of reclamation fees to confront the vast infrastructure problems existing on Navajo land. The Navajo Nation has complied with the requirements of SMCRA and has made tremendous strides in not only reclaiming abandoned mine lands but also in rehabilitating the communities effected by past and present mining activities.

At a minimum, the Navajo Nation recommends to the Committee to maintain the 50% allocation currently authorized under SMCRA. However, given the infrastructure problems faced by the Navajo Nation and other Tribes, we urge the committee to increase the Tribal share to help Tribes address these infrastructure issues.

Extension of the Reclamation Fee Expiration Date

Since September 30, 2004, the AML reclamation fee has continued through a series of congressionally mandated extensions. The Navajo Nation requests that any reauthorization of SMCRA extend the expiration date to at least September 2018. The number of abandoned mine sites in the U.S. is vast, and the impacts of past mining are felt in many communities. An extension to 2018 would allow the OSM a sufficient period of time to rehabilitate their priority sites and allow States and Tribes to achieve the goals and objectives of SMCRA.

Trust Fund Balance

The Navajo Nation's share of the unappropriated AML Trust Fund balance is currently around $32 million. This is money that exists due to the coal mining activities on the Navajo Nation, and as such, the Navajo Nation has a right to expect this money will be retuned to the Nation as per SMCRA. The Navajo Nation does not object to aiding the cleanup of abandoned mine sites across the nation using the portion of the AML fee allocated to OSM. However, the Navajo Nation does object to having almost $32 million sitting in a trust fund for no appreciable reason to help shore up the federal budget when there are so many Navajo people and communities that can be helped by using this money as it was originally intended. The Navajo Nation desperately needs this money to continue cleanup AML problems and infrastructure development.

Primacy

Within Indian Country, there is no greater principal than that of sovereignty and self-determination. The ability of the Tribes to determine for ourselves what is best for our land and our people has been recognized repeatedly by the federal government. Congress too recognized this principal in 1977 during the consideration and passage of SMCRA. SMCRA allows States to apply for and receive the ability to regulate surface mining activities on State and Federal lands in §503. While Congress seems to have been unsure of how best to allow Tribes to apply for and receive primacy over mining activities, it directed the Secretary to consult with Indian Tribes and conduct a study to determine how best to facilitate the granting of primacy over Tribal lands. The purpose of this study was to propose legislation that would authorize Tribes to apply for and receive primacy to assume the regulatory duties over the administration and enforcement of surface mining on Indian lands in a manner to similar to that of States.

In the ensuing 28 years, the Secretary has failed to propose legislation that would allow Native Nations to assume primacy as directed by Congress. The Navajo Nation has worked extensively with the Department of Interior to facilitate this proposed legislation.

- 1982: OSM entered into a Cooperative Agreement with the Navajo, 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, 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, δ2514 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 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. Despite having 28 years to make their recommendations, OSM has failed to introduce or advocate on behalf of Tribal primacy legislation. Congress has had the Secretary's recommendations regarding Tribal primacy for 18 years; however, OSM is not authorized to accept applications for primacy until authorized by Congress.

Twenty-four coal mining States have obtained primacy from OSM for the authority to regulate, inspect, and enforce surface coal mining within those states since 1977. The Navajo Nation has the ability and the experience to assume authority over the regulation and enforcement of coal mining on Navajo land. While the Navajo Nation understands that there may be some jurisdictional question that require Tribes and OSM to continue to work together to address, the Navajo Nation requests simply 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. The Navajo Nation believes it can regulate and inspect existing mining operations in a timely 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 language that would authorize the application and granting of primacy to Native Nations.

The following is proposal language that would satisfy this requirement. We are aware that there have been several other proposals that would also allow the Navajo Nation to apply for primacy. The Navajo Nation would work with any potential sponsor to facilitate this change.

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."

The Navajo Nation respectfully requests that the Committee approve an amendment to SMCRA that would allow the Navajo Nation to apply for primacy. Without this legislative change the Navajo Nation would never be able to apply for primacy to regulate surface mining and reclamation activities on our own lands. Finally, it

is important to note again that the Navajo Nation is not asking for a legislative change that grants it primacy. We are simply asking for the ability to be treated like a State and apply for primacy.

Pending Legislation

After reviewing the pending legislation, the Navajo Nation feels that the S. 1701 introduced by Senator Thomas comes the closest to satisfying the Navajo Nation's needs. First, S. 1701 extends the AML fee collection until 2016. While not the extension to 2018 that the Navajo Nation feels would be a sufficient amount of time to finish reclamation activities, this point is outweighed by the other benefits of the legislation. Second, S. 1701 begins to disburse the unappropriated trust fund balances beginning next year. For the Navajo Nation with a balance of approximately $32 million this amounts to three payments equal to one quarter of the total balance paid out for three years. The Navajo Nation strongly supports this provision.

Third, Senator Thomas' legislation continues to allow AML allocations to be used for PFPs. The importance of continuing to allow SMCRA allocations to be used for PFPs cannot be underestimated for the Navajo Nation. Finally, Senator Thomas' legislation proposes a unique solution to the current problem of undisbursed funds sitting in the federal treasury. Namely, S. 1701 allows States and Tribes to collect their own AML fees and then provide 50% to the federal government. The Navajo Nation strongly supports this move to ensure that States and Tribes receive their allocations in a timely manner as opposed to waiting for the money to be appropriated.

CONCLUSION

The Navajo Nation has long supported the reauthorization of SMCRA. The AML fee allocation provides an important opportunity for the Navajo Nation to not only finish the last of the reclamation activities, but also to continue the PFPs to help those communities impacted by mining. The Navajo Nation also strongly supports the release of the unappropriated trust fund balance and the ability to collect our own AML fees. While the Navajo Nation is encouraged by the efforts of Senator Thomas and S. 1701 to address the concerns of the AML program, we urge the committee to include the primacy provisions in the legislation to ensure that the Navajo Nation will have the ability to be treated like States and determine for themselves how they will manage their own surface mining and reclamation activities. The Navajo Nation has established that it has the expertise and processes in place to effectively handle this authority. Thank you for the opportunity to provide this testimony to the Committee.

Senator THOMAS. Thank you, sir. I'm glad you're here.

Mr. Green.

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

Mr. GREEN. Thank you, Senator Thomas.

My name is Evan Green. I'm the administrator of the Abandoned Mine Land Division of the Wyoming Department of Environmental Quality. I'm 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 Senate Energy and Natural Resources Committee for inviting Wyoming to present our views on this important issue.

I would also like to recognize the hard work by Members of Congress, by the Office of Surface Mining, and by the AML States and tribes in attempting to craft a reauthorization proposal that will be fair to all entities with an interest in the outcome of this deliberation.

My thanks also go to your individual staffs for their assistance in this process.

As to the specific bills before you today, Wyoming supports the reauthorization concepts contained in S. 1701 offered by Senator

Thomas. We have some serious concerns with several provisions of S. 961 sponsored by Senator Rockefeller.

The interests of the Nation's most productive coal-producing State with respect to S. 1701 are:

First, a prompt release of Wyoming's share of the AML Trust fund. S. 1701 provides for a payout of these funds over a 5-year period. And this schedule is acceptable.

Second, a fair share of future AML revenues returned to the State with the flexibility to use these funds to address the impacts of mineral development. S. 1701 meets this criterion.

Third, a reduced fee structure that lowers the tax burden on Wyoming coal producers. S. 1701 provides a phased fee reduction over the course of the program extension.

Wyoming also appreciates the option of allowing States to collect the reclamation fee.

As to S. 961, Wyoming cannot agree to provisions which do not address the State's needs. For example, Wyoming coal producers would pay almost $2 billion in reclamation fees over the term of the extension, but the State would continue to receive only about 25 to 30 percent of collections, as we have in the past. SMCRA promised 50-percent return, and that promise should be honored.

Wyoming's Trust Fund of $450 million would not be returned, and there is no commitment that Wyoming or other States would receive Trust Fund balances in future years.

And, finally, Wyoming would remain subject to the limitations on project prioritization currently in SMCRA. As a certified State, Wyoming should have the authority to decide how to spend the funds generated by our coal producers.

Just a few words on Wyoming's track record. Wyoming's record of administering its AML program demonstrates our commitment to the program and its appropriate application to meet the needs of our State. Wyoming has used AML funds very efficiently. We maintain a 95-percent obligation rate, which means that the money is put to work quickly on the ground to address hazardous sites. Our administrative costs are less than 5 percent.

Wyoming has closed more than 1,300 hazardous mine openings, reclaimed over 30,000 acres of disturbed land, and controlled or abated 22 mine fires. Thirty-five miles of hazardous high walls have been reduced to safer slopes, and over $115 million have been spent to mitigate and prevent coal-mine subsidence in Wyoming communities.

In regards to work remaining, Wyoming's continuing inventory of historic mining districts has identified almost 400 additional coal sites, and over 650 non-coal sites that continue to pose a hazard to Wyoming citizens and to visitors to our State. Control of mine fires in response to ongoing subsidence and emergency situations are not included in this total. These will continue to be a liability to Wyoming in the future.

Mining activities have impacted every one of Wyoming's 23 counties. Many communities continue to suffer the direct effects of energy development and the boom-and-bust nature of the State's economy.

Infrastructure projects, such as public water systems, hospitals, health clinics, and other projects addressing public health and safety, will continue to be a priority.

All of the States and tribes have continuing reclamation needs under the legitimate and original purposes of SMCRA. Wyoming believes the reauthorization legislation should honor the government's commitment to return the States' and tribes' share of the AML Trust Fund and that all participating States and tribes should be fairly treated.

I, again, appreciate the opportunity to present Wyoming's position today.

Thank you.

[The prepared statement of Mr. Green follows:]

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

Good Morning, Mr. Chairman. My name is Evan Green. I am the Administrator of the Wyoming Abandoned Mine Land Division of the Department of Environmental Quality. I wish to thank Chairman Domenici and the members of the Senate Committee on Energy and Natural Resources for inviting the State of Wyoming to testify at this hearing today.

I have been invited here today to speak briefly on the reauthorization of Abandoned Mine Land Reclamation fee, and changes to the Surface Mining Control and Reclamation Act of 1977 as proposed by S. 1701 and S. 961. As you know, I speak from the perspective of our nations largest producer of coal and therefore, the nations largest source of AML funds. I commend you for your willingness to hear from representatives of coal producing states and other interested parties about this important issue. As always, Wyoming stands ready to work with the Congress in addressing the shortcomings of SMCRA and the need for a fair and equitable distribution of past collections and future revenues from the AML fee.

SUMMARY OF WYOMING'S POSITION

I wish to begin by saying that Wyoming supports many of the AML fee reauthorization concepts contained in S. 1701 sponsored by Senators Thomas and Enzi of Wyoming. 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 support S. 1701 on the following items:

- A prompt release of Wyoming's share of long overdue funds from the AML Trust Fund. S. 1701 provides this release over a five-year period; a time frame we find acceptable.
- Guaranteeing a fair share of future AML revenues to complete the reclamation of abandoned mine sites in Wyoming, and address the impacts of energy development on Wyoming communities and the State's infrastructure. Wyoming appreciates the opportunity provided by S. 1701 to collect reclamation fees and retain the State's 50% share.
- A reduced fee structure that lowers the tax burden on Wyoming coal producers.

In contrast, however, there are provisions in S. 961 that do not address the needs of our country's largest and most productive coal producing state. For example:

- Wyoming's coal producers would pay almost $2 billion in reclamation fees over the term of the extension, but the state would continue to receive only 25-30% of what it pays in going forward. Since 1977, SMCRA has promised a 50% return to the states, that law and promise, must finally be kept.
- Wyoming's trust fund of $450 million, money owed the state pursuant to laws passed by this body, must be returned in a timely fashion.
- Escalating construction costs, inflation, and a lack of interest on the fund depreciate the real value of Wyoming's share of this account. Congress promised not only Wyoming, but also other coal producing states this money, but has never kept this promise. We believe strongly that this funding denial should not stand.

- There is no commitment that Wyoming, or other states, will receive trust fund balances in future years.
- Wyoming would remain subject to the limitations on project prioritization currently in SMCRA. As a certified state, Wyoming should have the authority to decide how to spend the funds generated by our coal producers.

HISTORY

When the Surface Mining Control and Reclamation Act was enacted in 1977, it included a fee on coal production. Proceeds from the fee were placed in the Abandoned Mine Land (AML) fund. By law, one-half of the fees collected in each state or on tribal lands were to be returned to the state or tribe of origin. The other half of the collections were to be spent at the discretion of the Secretary of the Interior to address reclamation issues of national importance. All AML expenditures, including state and tribal shares and the OSM's allocation, are subject to the federal budgeting process and annual appropriation by Congress.

Since the middle of the 19th Century, Wyoming has been a major source of energy, fueling America's industrial revolution and supporting its 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 did the market for Wyoming coal. Mines opened in Sheridan and Campbell counties to supply demands nationwide for clean and inexpensive 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 will be discussed below, ongoing inventory efforts continue to show 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, such as S. 1701.

Despite the bills intent and the clear mandate of law, Congress has never appropriated to states and tribes the 50% of fee collections guaranteed by law. Wyoming, for example, has received only 29% of fees collected in our state since the approval of its reclamation plan in 1983. This is a refusal of the Federal Government to discharge the obligations it placed on itself under law.

We are very concerned that Wyoming's coal producers will be asked to bear the largest burden of AML fee collections without the return of an equitable portion of those funds to Wyoming. In 2004, Wyoming producers paid over $130,000,000, yet Wyoming's AML program received only $29,900,000 in distributions. That's only 22.5% of money Wyoming contributed, while other states have received 40%, 50% and even over 100% of their contributions.

Appropriations from Congress to address AML problems in Wyoming and other coal states are constrained by budget ceilings established by Office of Management and Budget. Annual AML distributions to states and tribes have never reached the 50% of AML fee collections mandated by Congress in SMCRA. As a result, the AML Trust Fund now contains almost $1.5 billion, of which $972 million is the states share balance, which by law is to be distributed to AML states and tribes.

Through fiscal 2004, Wyoming coal companies have paid over $2 billion into the fund. Only about 29% of these collections have returned to the State. Wyoming has received only $529,706,000 in annual allocations. Over $450,000,000 million of Wyoming's state share resides in the AML fund. This money, now idle in this federal account, could be put to productive use reclaiming hazardous mine sites and mitigating the deleterious effects of mining and mineral processing activities in Wyoming communities.

OBLIGATIONS TO COMBINED BENEFITS FUND

The 1992 Coal Act shifted the AML Trust Fund interest away from reclamation and towards the social needs of the dependents of the United Mine Workers and the desires of the bituminous coal operators by subsidizing shortfalls in the Combined Benefits Fund (CBF).

These social priorities have steered AML funds away from the needs of states and tribes, especially those states that produce the lion's share of the Nation's coal. Again, we recognize the need for the fund and support its goals.

ACCOMPLISHMENTS OF THE WYOMING AML PROGRAM

Since implementation of the Surface Mining Control and Reclamation Act of 1977, Wyoming coal producers have paid over $2 billion dollars in reclamation fees into

the AML Trust Fund. In return, Wyoming has received about $530 million dollars, or 29% of these total collections, far less than what it is owed under law. Wyoming consistently maintains an obligation rate in excess of 95% of funds received, and spends less than 4% on administrative costs. As to the application and administration of this fund, Wyoming's hands are clean.

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 $115 million have 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 $96 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 of about 6% a year. Unfortunately, Wyoming has not enjoyed economic diversification and remains largely dependent on mineral extraction, primarily coal, oil and gas. 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.

CERTIFICATION ISSUES

Wyoming is subject to continuing criticism for its decision to certify in 1984. Based on information at the time, Wyoming believed that sufficient funding (the full 50% of collections) would be available to address known P1 and P2 coal sites. We now know that this honest and legitimate reliance was misplaced. Also, the state placed a high priority on reclaiming the vast and extremely hazardous pits and high walls left by uranium extraction in the 1960's and 1970's; a perfectly legitimate concern at that time. Finally, it must be remembered that the federal government reviewed and approved of Wyoming's certification.

At the time, Wyoming also assumed that the AML program would expire in 1992 and decided to exercise the State's option to address both coal and non-coal hazards to public health and safety. Again, the certification was applied for by Wyoming, and was granted by the federal government. Wyoming's critics have used our certified status to claim that Wyoming has completed its reclamation of abandoned mine land sites or has no remaining hazards to be addressed.

Nothing could be further from the truth. Criticism of Wyoming's status is, therefore, inappropriate and is, if anything, a diversion from the real and difficult issues imposed by this law. Wyoming still has a substantial internal inventory of P1 and P2 coal sites, some of which were unknown at the time of certification.

HAZARDS REMAINING TO BE RECLAIMED IN WYOMING

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 a wealth of 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 State AML rapid response program, or under the normal AML project priority system.

Wyoming AML is currently in the final stages of a major statewide inventory process, the first comprehensive study of its kind, 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 the Bureau of Mines records, from company files, museum records, and archives of the Wyoming State Geologic Survey. Files and records from the Department of Energy (uranium), from Federal Land Management Agencies, and from the U.S. Geologic Survey were reviewed in detail for information on the location of mines and mining districts.

The results of this intensive research were validated by site inspections in the field during the 2004 field season. Results from the inventory project verify that there are 393 additional P1 and P2 coal sites and 650 non-coal sites. As it has done in the past, Wyoming will move forward to address the challenges faced by abandoned mine lands.

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. This is only the fulfillment of obligations Congress imposed by law upon itself.

Because annual AML appropriations to States and Tribes have lagged behind AML fee collections, the AML fund has a current balance of $1.5 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 $475 million by September 30, 2005. 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 conditions, so the certified states are able to use the funds, as they deem appropriate.

2. A Fair Share of Future Revenues

Wyoming wants it's legally mandated 50% of future fee collections returned to the State to address remaining hazardous coal and non-coal mine sites.

The reauthorization proposals currently under consideration will require Wyoming coal producers to pay $1 to $1.5 billion dollars into the AML Trust Fund in the next 10 to 15 years. Wyoming recognizes that the problems in Eastern States must be addressed, but the state making the largest financial contribution to the AML program should receive just compensation from future fee collections. Wyoming citizens remain at risk from the hazards of abandoned mines, as do citizens in other states with similar issues. 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, and S. 1701 would allow the State to address those impacts. 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 ongoing conditions that will exist in perpetuity. The result of Wyoming's inventory work is not yet reflected in the Abandoned Mine Land Information System (AMLIS).

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 6 to 8 percent a year. This increase in production will offset 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.

4. Objections to S. 961

As discussed above, Wyoming has strong concerns with the proposal contained in S. 961. Wyoming strongly objects to any proposal that would continue to tax Wyoming coal producers and fail to return its legal share of those collections to the State. We believe that the bill sponsored by Senators Thomas and Enzi is fair to all states and tribes with AML programs.

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.

We believe Congress should go further than S. 1701, which omits some critical elements of reforming SMCRA once and for all. S. 971, while putting forward positive and constructive ideals, also falls short in Wyoming's view. What is needed is comprehensive reform addressing each and every element of SMCRA so that all stakeholders may be able to fulfill their obligations.

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 to 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 and Natural Resources Committee for the opportunity to be heard on these important issues.

Senator THOMAS. Thank you, sir.

Mr. Hohmann.

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

Mr. HOHMANN. Good morning, Mr. Chairman. My name is Steve Hohmann, and I'm director of the Division of Abandoned Mine Lands within the Kentucky Department for Natural Resources.

I'm appearing here today on behalf of the National Association of Abandoned Mine Land Programs and the Interstate Mining Compact Commission, and I thank you for the opportunity to discuss pending legislation that addresses the future of the Abandoned Mine Reclamation Program.

In particular, I would like to address the views of the States and tribes regarding the future collections of AML fees, adequate funding for our Abandoned Mine Land Programs, and related legislative adjustments.

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 by State reclamation programs. Please remember that the AML Program is, first and foremost, designed to protect public health and safety. The bulk of State and tribal AML projects directly correct an AML feature that threatens someone's personal safety or welfare. For example, last year, in my home State of Kentucky, the AML Program reclaimed over 125 abandoned mine hazards, including 19 dangerous landslides and 73 mine openings. We also improved water quality in 5.6 miles of stream. All together, these abatement projects removed abandoned-mine hazards that threatened over 3,500 Kentuckians.

Additionally in 2005, the Kentucky AML Program completed six water-supply projects that installed 59 miles of water line directly providing 823 households with potable water. Many hundreds more residents were able to tap into AML-installed water-mains.

Although the States and tribes have made significant progress abating AML hazards, the escalating costs of reclamation, coupled with decreasing AML grants, hinders our ability to reduce the AML problem inventory. AML sites tend to get worse over time, thus increasing reclamation costs. And inflation exacerbates these costs.

The inventory is also dynamic. 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-mine sites.

The States and tribes, through the IMCC and 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 reflect a minimalist approach to AML reform. They are as follows:

First, to extend fee-collection authority to at least 2020 to allow enough time to collect sufficient money to address the significant AML problems that remain.

Second, to adjust the procedure by which States and tribes receive their annual allocations.

Third, to eliminate the Rural Abandoned Mine Program, or RAMP, and to reallocate those moneys to the historic coal-production share.

Fourth, to assure adequate funding for minimum program States who have consistently received less than their promised share of funding over the past several years.

Fifth, to address a few other select provisions that will enhance the overall effectiveness of the AML program, such as re-mining incentives and State AMD set-aside programs.

And, finally, to address how the accumulated unappropriated State- and tribal-share balances in the fund will be distributed, while, at the same time, assuring that an adequate State-share continues for the balance of the program.

In general, Mr. Chairman, we can support most of the provisions contained in S. 1701 and S. 961 that have been introduced by Senators Thomas and Rockefeller. As a bottom line, we believe that Congress should take expedited action to preserve—and, ideally, enhance—this vital program. In this regard, if there are opportunities to amend these bills, we have a few suggestions.

First, we do not believe it is necessary to adjust the current priority scheme in section 403 to eliminate the general-welfare provision, or priorities four and five. To our knowledge, there is no evidence of abuse by the States or tribes regarding our selection of AML projects. However, to the extent that Congress believes the priority system should be adjusted in some way, we believe it would be appropriate to increase the Acid Mine Drainage Set-aside Program from 10 percent to, ideally, 30 percent.

Second, in terms of reducing AML fees, as proposed in S. 1701, we do not believe such a reduction is necessary, simply because the fee has never been adjusted for inflation over the past 27 years. However, if Congress believes that a fee—a reduction in the fee is

necessary, then it is critical to extend fee collection to at least 2020 to allow enough time to collect sufficient money to address the significant AML hazards that remain in the inventory.

And, finally, we trust that any moneys diverted for use by the Combined Benefit Fund will be limited to interest on the AML Trust Fund only, and not to the principal. We believe it is essential that the principal in the fund be maintained for its intended purposes.

We appreciate the opportunity to present this testimony today, Mr. Chairman, and look forward to working with you in the future.

Thank you.

[The prepared statement of Mr. Hohmann follows:]

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

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 21 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 pending legislation that addresses 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 regarding several reauthorization issues including 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.

Mr. Chairman, all parties affected by AML reauthorization agree that, 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 also provides 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's Division of Reclamation Support, as of June 30, 2005, the states and tribes have obligated 96% of all AML funds received. Also, based on information maintained by OSM in its Abandoned Mine Land Inventory System (AMLIS), as of June 30, 2005, $1.9 billion worth of priority 1 and 2 coal-related problems have been funded and reclaimed. Another $354 million worth of priority 3 problems have been funded or completed (many in conjunction with a priority 1 or 2 project) and $398 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. We must 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. In fact, OSM is currently revamping the inventory to include data on health and safety features and the number of citizens safeguarded from the hazards associated with those features. 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 mining. 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 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 $300 million will be collected from AML receipts in FY 2006 (assuming no fee adjustment). If the federal government returned all $300 million to the local economies for abandoned mine land re-construction, almost 7,000 additional jobs could be created with an additional $175 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 and tribal AML programs. Since the mid-1980's, funding for state and tribal AML grants has been declining. For instance, in the FY 2006 budget, OSM proposed a decrease for the second year in a row for state and tribal AML grants. These grants are separate from moneys allocated to the states for the Appalachian Clean Streams Initiative (ACSI) and for state-administered emergency programs. The non-ACSI, non-emergency state and tribal AML grants are the lifeblood of state and tribal AML programs and represent the primary source of funding for the majority of priority 1 and 2 AML work that is undertaken each year. Over the past two fiscal years, and now again this year, we have seen a disturbing downward trend in these critical baseline grants: $142 million in FY 2004; $136 million in FY 2005; and now a proposed amount of $129 million for FY 2006. These numbers are based on an detailed analysis of information contained in OSM's budget justification document.

We are losing ground, Mr. Chairman, in the battle to address high priority AML sites that threaten our citizens. It is essential that this trend be reversed immediately if we are to accomplish the goals and objectives of the AML program. We therefore request that, as a part of AML reauthorization, the Committee address the matter of increasing baseline state and tribal AML grants to a level that will support vibrant and effective programs. We believe this can best be achieved by taking the AML appropriation off-budget. We also urge the Committee to provide for the expeditious return of unappropriated state and tribal share balances so that additional moneys can be directed to high priority AML hazards and problems.

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 newest expiration date of June 30, 2006, we are again beginning to see various legislative proposals for how the Fund should be handled and how SMCRA should be amended. The states and tribes, through IMCC, the National Association of Abandoned Mine Land Programs and the Western Governors Associations 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 to at least 2020 to allow enough time to collect sufficient money to address the significant AML problems that remain.
- 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 program's extended time frame.
- 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.

The two bills that are the subject of today's hearing address several of these concerns and, to that extent, are an excellent starting point toward AML reauthorization. In particular, S. 1701 introduced by Senator Thomas amends Title IV by extending fee collection until 2016; provides for a phased reduction of fees over that same period of time; eliminates RAMP and moves those allocated moneys to historic coal production; provides for a guaranteed annual minimum program allocation of $2 million; increases the acid mind drainage set-aside from 10 to 20 percent; insures repayment of unappropriated state and tribal share balances and does so off-budget; eliminates the problematic lien provision in Section 408; removes the 30 percent cap on water restoration projects; and provides for various remining incentives. The bill also provides a unique opportunity for states and tribes to collect AML fees on their own, returning to the federal government its 50 percent share, and requires all amendments to the AML inventory to be approved by the Secretary. Finally the bill adjusts the priority scheme under section 403 by eliminating the "general welfare" clause and allowing priority 3 projects concerning environmental impacts to be addressed only in conjunction with a priority 1 or 2 project.

S. 961, introduced by Senator Rockefeller, addresses some of these same provisions in Title IV, but extends fee collection to 2019; maintains the AMD set aside at 10 percent; eliminates priorities 4 and 5 in section 403; allows the Secretary to initiate certification under Section 411 on his/her own volition; and provides for a scrub of the AML inventory to eliminate general welfare sites that were added after 1998. Both bills address the Combined Benefit Fund (CBF) for retired mine workers, including making the full amount of interest generated on the AML Fund available for CBF purposes and freeing up stranded interest in the AML Fund for purposes of CBF. S. 961 would also make the unappropriated RAMP share balance available for the CBF.

In general, Mr. Chairman, we can support most of the provisions in both of these bills. As a bottom line, we believe it is essential that expedited action be taken by Congress to preserve and ideally enhance this vital program. In this regard, if there are opportunities to amend these bills, we have a few suggestions. First, we do not believe it is necessary to adjust the current priority scheme in section 403 to eliminate the "general welfare" provision or priorities 4 and 5. To our knowledge, there is no evidence of abuse or inappropriate action by the states or tribes regarding our selection of worthy AML projects over the past 27 years of the program. OSM, who is responsible for conducting annual oversight of our programs, has reviewed our project selection and has consistently lauded us for the effective and efficient use of our AML funds and for the legitimacy and value of the projects we choose to undertake. However, to the extent that Congress believes that the priority system must be adjusted in some way, we believe it would then be appropriate to increase the acid mine drainage (AMD) set-aside program from10 percent to ideally 30 percent.

Second, in terms of reducing AML fees as proposed in S. 1701, we do not believe such a reduction is necessary, particularly in light of the fact that there have never been any adjustments in the fee for inflation over the past 27 years. However, if Congress believes that a reduction in the fee is necessary, it is critical to extend fee collection to at least 2020 to allow enough time to collect sufficient money to address the significant AML problems that remain in the inventory.

Finally, we trust that any moneys diverted for use by the Combined Benefit Fund (CBF) will be limited to interest on the AML Trust Fund only, and not to the principal. We believe it is essential that the principal in the Fund be maintained for

its intended purposes. To do otherwise would be to subvert the entire premise of Title IV and to undermine the original intentions of SMCRA's framers.

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 June of 2006. It is even more obvious that, regardless of what the unappropriated balance in the Fund is (currently $1.8 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 long-term 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.
- 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. The restoration of these citizens' communities is also being impacted by delays in returning the unappropriated state and tribal share balances. 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 rethought 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. Well, thank you, sir. And thank all of you for being here. We'll take a minute or two for some questions, and go around for the various Senators to do that.

Mr. Shope, if I may begin with you. First of all, share with Jeff our appreciation for his work at OSM, please. He's done a good job.

I just have one question. S. 1701 contains a provision that allows the States and tribes to collect the fee, retain their shares, and submit the balance. What is the administration's position on that?

Mr. SHOPE. Well, thank you, Senator. I will pass on to Director Jarrett your comments.

With respect to that provision, we are enthused by the novel approaches that are coming out of this committee, including that particular provision. We do have some particular concerns, however, with it. Those concerns basically fall into three categories: logistics and the costs of that effort, the equity of such an effort, and perhaps the legality of it.

First, with respect to logistics, OSM is very proud of its 99.9 percent collection rate for AML fees. We have an expertise and an infrastructure that is already well established and in place. We have a very efficient and effective program in order to collect those fees. The concept of potentially expanding that program to have as many as 26 different agencies collecting the same fee, as well as maintaining the Federal Government, OSM's, responsibility to collect, audit and oversee those fee collections, does raise some concerns, as far as the cost and the logistics, as well as potential confusion for the regulated community as to what the fee rate is, and who it is they're paying it to.

As far as the equity is concerned, there would be a concern for smaller programs that may not be able to take advantage of that opportunity; whereas, larger programs that would have sufficient resources could, in fact, take advantage of it.

And, finally, there are some outstanding questions that have been raised, concerning the legality or constitutionality of allowing a State to collect a federally imposed AML fee. Again, that's just an outstanding question.

So, again, we applaud the novel approach. We think there needs to be some further discussion and analysis of that.

Senator THOMAS. Thank you very much. Obviously, the reason for it being there is so that the States would be able to maintain the money that they say is their share.

Mr. Shirley, thank you for your observations. Even though you're certified, you still have needs that you think AML funds could be used for. Could you elaborate on those?

Mr. SHIRLEY. Well, some of the needs are, basically, the Public Facility Infrastructure Program, you know, where some of the mining that has been impacted by—some of the communities that have been impacted by the mining. We have road needs, we have water—need for water distribution, power lines, just any number of things that makes a community viable and functioning.

Senator THOMAS. That are related to mining.

Mr. SHIRLEY. That are related to mining, yes. And these are communities impacted by mining.

Senator THOMAS. Thank you.

Mr. Green, you didn't comment on how long you think the fee should be extended. Do you have a position on that?

Mr. GREEN. We would accept the provision in your bill, Senator Thomas.

Senator THOMAS. You mentioned the State partnering with Federal agencies to eliminate mine-related hazards on Federal land. How would these be financed?

Mr. GREEN. Senator, we currently have an outstanding agreement with the Bureau of Land Management. The BLM's AML program has contributed over a million and a half dollars to supplement those funds available through the OSM funding to the State of Wyoming, primarily for cleaning up priority-three hazards, environmental impact on BLM land. This is in addition to the funds that the State of Wyoming's AML program would normally spend on public lands.

We have also entered into cooperative funding agreements with the National Park Service and with the Western Federal Highways Division for certain reclamation projects.

Senator THOMAS. Okay, fine. Thank you, sir.

Mr. Hohmann, I've heard views opposing re-mining. Our proposal includes language that would allow this activity to take place. You expressed support for re-mining. Could you elaborate on that, please?

Mr. HOHMANN. Yes, sir. Re-mining is a very good way to save the AML fund precious dollars in the long run by having existing mining companies in—as part of their mining and reclamation efforts, go in and reclaim some of these abandoned mine hazards.

In my State, in Kentucky, we take advantage of the AML enhancement rule, which is a form of re-mining incentive, which has allowed us to clean up several coal refuse piles at no cost to the State, to our AML fund, by working and partnering with coal companies who are mining in the area, and getting them to mine through these gob piles and reclaiming.

Senator THOMAS. Thank you, sir.

Senator Bingaman.

Senator BINGAMAN. Thank you very much, Mr. Chairman.

Mr. Shope, let me ask, first, on the administration's position. As I understand it, the bill that the administration proposed in the last Congress called for reducing the Abandoned Mine Reclamation fee. Is that still your position? You believe that fee ought to be reduced?

Mr. SHOPE. Senator, we believe that the fee, standing alone, in and of itself, can't be viewed in a vacuum. It needs to be part of the formulae—a larger formula, which is: the amount of the fee, the length that the fee is assessed, and then what happens to that fee once it is assessed. There are different proposals, different ways of making that formula equate to completing the high-priority reclamation that is out there. Under S. 1701, there is a fee-cut in there. Under S. 961, there is no fee-cut. Neither one of those proposals—taking into account the length of time, the amount of money that's collected, and where it's being appropriated—gets the high-priority job done. Under our bill that we introduced last year, we also had a fee-cut in it. However, because we made adjustments to the allocation, there was sufficient money.

So, in and of itself, a fee-cut cannot be analyzed in a vacuum. It needs to be taken into consideration with the entire package that's out there.

Senator BINGAMAN. So, your position is that you do not support a fee-cut unless it would allow for sufficient funds to do all of the reclamation—the high-priority reclamation work that you believe is in the inventory?

Mr. SHOPE. That's correct.

Senator BINGAMAN. Okay. You also—well, I don't know what position you've taken. I guess, let me ask the administration's position on the tribal primacy. As I understand President Shirley's testimony, his suggestion is that tribes be allowed to seek primacy for the title 5 regulatory program under the same standards that States currently can do that. Do you favor that, or oppose that?

Mr. SHOPE. Senator, the current law does not permit tribes to apply for primacy. We do support the ability of a tribe to apply for primacy of the regulatory program. Of course, the particulars of such legislation would have to be reviewed, but we do support that. We've been working with the tribes in that effort. And, in fact, we have been funding the tribes to gear up toward that effort by providing them funding for training of inspectors and other regulatory matters.

Senator BINGAMAN. Thank you very much for that answer—one of the features of the administration's proposal last Congress was to change the formula so that more money would be directed to States with the greatest need. The practical effect of that would be to shift funding from the West to the East. You indicate that continues to be the position of the administration.

I guess, one issue there that occurs is: Do you believe that the 50-percent State-share should be eliminated in the future? Modified? Maintained? What's your view on that?

Mr. SHOPE. Well, again, Senator, last year—we've been working at this for some time now—the proposal that we put forth last year did recognize removal of the State-share, going forward. Of course, it did follow our principals, which were, first and foremost, to provide more funding to high-priority coal-reclamation needs, and to get the expedited payment of unappropriated State-share balances that currently remain, but to do so within the confines of the budget restrictions which we have. Again, that gets back to my earlier answer to your question. It's—one element of that formula, in and of itself, can't be viewed alone. You need to look at the entire package.

So, the proposal that we put forth last year, as I mentioned, did have a fee-cut in it, but it did collect sufficient funds and, by shifting the allocation formula toward high-priority coal sites, was able to accomplish the job. There may be other proposals that are out there. That's why the administration, this year, did not put in specific legislation. However, we did provide funding, or proposed funding, in the President's budget to make legislation that comports with those principles.

Senator BINGAMAN. Well, in one part of your testimony that, I guess, leaves me somewhat confused, you state these various principles that should guide this AML legislation. And, included in that, you say that States that have certified completion of their coal reclamation work should be given expedited payment of the unappropriated State-share balances. I understand that. Does it make more sense to pay uncertified States—or doesn't it make

more sense to pay uncertified States their unappropriated balances so that they can go ahead and do the work to get certified?

Mr. SHOPE. We certainly agree with that, Senator. In fact, our proposal from last year would have done just that. The $58 million that we requested in the 2006 budget, or the $53 million in the 2005 budget, would have gone not just to certified States, it would have increased the grants to certified States, as well as the grants to non-certified States. In fact, out of $58 million that was requested in the President's 2006 budget, approximately $21 million would have been an increase to certified States, while $37 million would have gone toward non-certified States.

Senator BINGAMAN. My time's up, Mr. Chairman. Thank you.

Senator THOMAS. Thank you, sir.

Senator Allen.

STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. And thank our witnesses. And, most importantly, thank you for having this hearing.

I'm going to make a statement and give you, as a leader of this, my perspective.

First and foremost, coal is so important for our economy. We've gone through the energy bill. It is clear, for electricity generation in the future, we ought to be using clean coal technology. After all, we are the Saudi Arabia of the world in coal and, I think, advanced nuclear.

Part of the ability for us to have viable companies and production of coal revolves around this issue, the reclamation issue, as well as the health-benefits issue for miners. We, in Virginia, understand, as do people in the Commonwealth of Kentucky and Wyoming and elsewhere, the importance of protecting our environment, where coal production originated, and those surrounding communities. These abandoned mines do pose a danger in those communities. We're faced here, Mr. Chairman, with a problem that requires, in my view, a comprehensive solution. Listening to Mr. Hohmann, from the Commonwealth of Kentucky, a lot of his views are very similar to the situation and sensibilities and views of, I think, the Commonwealth of Virginia. And I know Senator Talent and Senator Bunning and I seem to have a similar approach to this.

We need to address the deficiencies in the Abandoned Mine Reclamation Program. It ought to be a plan that is developed equitably and expeditiously, providing needed funds for each of the affected States, including my Commonwealth of Virginia that has 106 unfunded sites.

I may not think that either of these two bills that have been proposed in the Senate are ideal, at least they may be a framework where we can bring all the various companies and people who are concerned about this together to get a comprehensive solution, to address the long-term viability of the Abandoned Mine Land Reclamation Program, as well as the Coal Industry Retiree Health Benefit Act.

I'm pleased to see that many of what once seemed like an intractable issues in all of those concerning the combined benefit fund

are being resolved, hopefully resolved, especially ones that are important to some Virginia-based enterprises.

So, I hope that, Mr. Chairman, the leadership here, and also on the House side, will work in this committee, with all the parties who are involved here, to adopt an affordable, equitable bill, in light of the existing very tight and taut budget environment.

I'm looking forward to some very positive solutions to reform the Abandoned Mine Reclamation Program and the Combined Benefit Fund, and will be hearing different views on that through this panel. And I hope that we'll agree that we've got to find a workable solution, a solution so that we do have the proper utilization of clean coal. It's important for jobs, it's important for our national security and the competitiveness of our country. But is important that both abandoned-mine lands, as well as the health-benefits issue, get resolved.

And I look forward to working with you, Mr. Chairman, and my colleagues Senator Bunning and Senator Talent, and all the different interested parties, and hopefully getting this done. It's important for those involved in it, and important for the future of our country. And I thank you for your very brave and courageous leadership in undertaking this. And maybe from this cauldron—I am hopeful and prayerful that we'll come up with a solution that everyone can agree with.

Senator THOMAS. Thank you.

Senator ALLEN. Thank you, Mr. Chairman.

Senator THOMAS. You mean everyone doesn't agree with it?

[Laughter.]

Senator ALLEN. They're just slight disagreements. We'll all get on the same—maybe we'll all get on the same——

Senator THOMAS. I'm sure we will. Thank you very much, sir.

Senator ALLEN. Thank you, Mr. Chairman.

Senator Salazar.

STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Senator SALAZAR. Thank you very much, Mr. Chairman.

In the interest of time, I will submit my opening statement for the record.

Senator THOMAS. It will be in the record, sir.

[The prepared statement of Senator Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Good morning. Thank you, Mr. Chairman. I want to thank you, Senator Bingaman and Senator Thomas for holding this important hearing.

A legacy of Colorado's mining heritage is abandoned mines and mine sites with no identifiable owner or operator, who may be responsible for site clean-up and reclamation. As a result, public funds are necessary to address health, safety and environmental issues at these sites. Unfortunately, the uncertainty of the availability of federal funds for this purpose affects Colorado's ability to address the remaining AML problems in the state.

Currently in Colorado, there are more than 17,000 abandoned mine sites that require safeguarding, 33 underground coal mine fires, and 150 sites that require environmental cleanup. The state estimates that it will take at least $200 million to address these long-standing problems. In addition, there are some 50,000 acres of land along Colorado's Front Range that are at risk of subsidence as a result of abandoned coal mines.

There are several principles that I will keep in mind as I evaluate alternative legislative proposals for reauthorizing the AML reclamation fund. They include:

- Any reduction in the amount of the fees paid by industry should be accompanied by a reasonable extension of the life of the program. I note that all of the bills before us would extend authority to collect the fee by at least 10 years to compensate for the proposed reduction in fees.
- Any changes in the amount of fees collected should be revenue neutral to Colorado. Given the size of the problem in Colorado, a shift of funds to eastern AML sites would be inappropriate and place an unfair burden on Colorado taxpayers.
- Current legislation allows for the reclamation of non-coal sites (Section 409 of SMCRA). This allows Colorado and other western states the greatest flexibility to deal with all abandoned mine problems.
- Some of the legislative proposal have included new language, which would authorize the Secretary of the Interior, "on the Secretary's own volition," to certify that a state has completed its coal-related abandoned mine problems. This seems both unnecessary and unwise. I look forward to hearing more about the reasons for this proposal.

Colorado's current unappropriated balance is approximately $24 million, a fraction of what is owed to Wyoming. But like the gentleman from Wyoming, I believe any repayment scenario must provide Colorado and other western states with the flexibility to complete remaining abandoned mine land reclamation. Further, access to the balance should not be contingent upon certification, as Colorado may never certify—because of the coal mine fires that need to be addressed in perpetuity.

Action is also critical because fees collected for the AML program fund medical benefits to several thousand mine workers. Through the United Mine Workers of America, coal miners living in 45 states who worked for companies that no longer exist are provided access to health care. While Colorado represents a small number of mine workers covered by this program as compared to states like Pennsylvania and West Virginia, my commitment to the promise made to these workers remains the same.

Unfortunately, with the increasing number of steel and coal company bankruptcies and the rise in health care costs, the burden is falling on fewer companies who are already struggling to thrive. It is my hope that today's witnesses will offer their insights on this issue so that we can develop a solution that is both fair and true to the intent of the law.

Thank you, Mr. Chairman. I look forward to working with you and with Senator Thomas on this important issue affecting both of our great states.

Senator SALAZAR. And let me just state, Mr. Chairman, that I think it is very important that you do hold this hearing, and I applaud for your efforts in holding this hearing.

I was noting, in reading some of the materials from our staff, that, when we project out to the year 2018, that 65 percent of all of the funds going into the AML are coming from the State of Wyoming. So, I understand the importance of this issue to your State, and also to our country, in terms of how we deal with the abandoned mine-land issues that we're facing.

I have a question for you, Mr. Shope. Frankly, I don't understand how you end up with the administration's position that what we ought to do is to cut the fees for AML. When you look at your own projections, it seems that, even when you limit the dollars that are needed for the priority-one and -two sites, you come up with the needed amount of somewhere in the neighborhood of $6.3 billion. And I think when someone looks at the question of whether or not we have enough money to take care of the AML issues that we're facing around the country, that you have to conclude that we simply have a revenue problem here. The need is much greater than the amount of money that we actually have.

And so, I don't understand why it is that OSM and the administration would be taking the position that would reduce the revenue stream coming in, when we have these huge needs that are being unmet. Can you respond to that question?

Mr. SHOPE. Certainly, Senator. And, again, let me clarify that the administration's position is that—the guiding principle is, there needs to be sufficient funds collected to reclaim those high-priority health and safety sites. There's not—we are not wed to a fee cut. It depends on—as I explained before, a formula of the amount of fee that's to be assessed, length of time, and then what you do with it when you collect that fee. Under the administration's bill from the last Congress, that provision did have a fee-cut in it, but there was also sufficient money that was being brought in and reallocated. By eliminating State-share, we did have sufficient funds collected to address all those high-priority sites.

Senator SALAZAR. So you would arrive at the conclusion that there would be sufficient funds to take care of the needs by taking the money away from the State-share?

Mr. SHOPE. Under the administration's proposal from last year, that is correct. That's correct. Now, coming forward into this Congress, we recognized that that didn't work last year. Our proposal, like all of the other proposals, was not successful. That's why we put forth our principles and have been working with the committee, standing ready to look at different ideas and see: Based upon those three factors, are sufficient funds being collected? If they are, then that is a bill that would meet our principle of reclaiming the highest-priority sites.

Senator SALAZAR. I don't have a position on this. What we have done with AML is, we've imposed fees on current operations for coal mining around the country, but especially how it affects the surface mines in places like Wyoming and other places around the country that operate through surface mines. Now, when you look at the whole legacy of coal mining, which is multi-generational and multi-century, do you believe that it's fair for the current coal operations in place to essentially bear the burden of paying for those costs of reclamation for those legacy effects on our environment?

Mr. SHOPE. Senator, that decision was made long before I began my Federal service. Do I think it's an important program and is yielding important results? Do I have a personal opinion? I don't know if it's appropriate for me to offer my personal opinion as to whether that is, in fact, the most appropriate way. That's for this committee to decide.

Senator SALAZAR. If you were king for the day, okay, and somebody were to come to you, and say, "Here are the huge needs that we have from Kentucky, West Virginia, Wyoming, and all over this country with respect to AML, and we only have a very small portion of the money that we need in order to take care of these needs that have been built up over more than two centuries in America, how would you propose that we fund those needs?"

Mr. SHOPE. Well, if I were king for a day, I guess I'd have to be elected Senator to make those kinds of important decisions, Senator.

[Laughter.]

Mr. SHOPE. Again, it's my responsibility to use the money that is provided under that scheme. Whether—the equity, I leave to this committee.

Senator SALAZAR. Okay. Let me ask you just one other question. I applaud Senator Thomas and his legislation with respect to the

authority of the States and the Governors of the States—to do the certification of completion of the program at the State level. I understand that the administration's position would essentially provide that authority to the Secretary of the Interior to create that certification. Can you clarify for me, on the record, whether you are supportive of the approach that Senator Thomas has taken on his bill, which is essentially to leave the program, as it is, in place today, and allow the Governor to make the certification? Or does the administration still want the Secretary of the Interior to make that decision?

Mr. SHOPE. We would be supportive of Senator Thomas's proposal. The reason that that was in our legislation last year was because it was dependent upon the particular package that we had put together, which was—it was more—the certification provision was entered into the bill because—as an administrative clarification. Under our proposal, sufficient funds would be given to a particular State, based upon their high-priority needs. Once they received all those funds, there would be no impetus to certify; and so, we needed to have some provision within the statute to allow us to go ahead and administratively certify that State and proceed forward.

Senator SALAZAR. Thank you, Mr. Shope.

And, again, Chairman Thomas, thank you for taking on this issue and holding this hearing today.

Senator THOMAS. Thank you, sir.

Senator Bunning.

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

Senator BUNNING. Thank you, Mr. Chairman.

I have an opening statement. I would like to include it in the record.

Senator THOMAS. It will be in the record, sir.

Senator BUNNING. Thank you.

[The prepared statement of Senator Bunning follows:]

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

Thank you, Mr. Chairman.

I am glad that we are again examining the issues involving the Abandoned Mine Reclamation Fund.

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.

This Committee has worked on this issue for a couple of years now. A consensus regarding how to reauthorize the AML program has been difficult to achieve because not only are there varying mining reclamation issues among almost 26 states and tribes, but also there are shortages in healthcare funding issues that we must grapple with due to AML interest being used to pay for the Combined Benefit Health Fund.

I have worked hard during my time in the Senate to ensure that the AML program continues. Every year I ask appropriators to give increased funding to it. Over $1.2 billion, however, is currently sitting in the fund unappropriated. I believe that the money should be going directly to the states to reclaim mines in a more timely and efficient manner instead of being used by the federal government for other purposes.

Kentucky's unappropriated state share balance is about $125 million.

And Kentucky is third in the nation for having the worst reclamation problems with over $330 million worth of high priority abandoned mine land areas that still

need to be reclaimed. So, giving back the state share balance would go a long way in helping it finish its reclamation.

The longer we wait to return the funding to the states, the more it will cost and the longer it will take to reclaim the mines. After 25 years of this program and over $7.5 billion contributed to the Fund by the coal companies, more mining sites should have been reclaimed.

I know many people are trying to develop a consensus to solve the issues surrounding the AML Fund. I am hopeful a consensus can be achieved so that we can move this program forward instead of continuing to reauthorize it on short-term timeframes.

I look forward to hearing about the legislation that has been proposed or introduced in the Senate.

I also am 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 efficient and productive manner. I look forward to hearing his testimony.

Thank you Mr. Chairman.

Senator BUNNING. Mr. Hohmann, there are several AML proposals, as you well know, out there right now. What are the specific AML reclamation needs of Kentucky that I need to make sure are met with a final bill?

Mr. HOHMANN. Senator, I think, in a nutshell, what Kentucky needs is more time and more money.

[Laughter.]

Mr. HOHMANN. We have a——

Senator BUNNING. Well, that's familiar with everyone.

Mr. HOHMANN. Without those two things, we won't be able to meet, in the foreseeable future, the reclamation need in Kentucky, which is, right now, approaching—over, excuse me, $330 million worth of high-priority abandoned mine-land sites. So, looking into the future, certainly increased funding and more time to accomplish the reclamation is what we need. The reclamation I'm speaking of doesn't really—that I just spoke of—doesn't include the waterline need in our rural coalfields, where the groundwater has been contaminated by past mining, and people can't drink it. We have waterline projects lined up like boxcars, waiting on funding. And so, what we need, actually, is just some more time and increased funding.

Senator BUNNING. Kentucky has an awful lot of priority-one and -two sites to finish. How long do you expect it to take for Kentucky to clean up those sites? Under the current proposals, will additional funding and the payback of the owned State Kentucky share of approximately $125 million shorten the expected timeframe of finishing Kentucky's worst reclamation sites?

Mr. HOHMANN. Yes, sir. If we were to receive our $125 million State-share balance, that would certainly boost our ability to reclaim these unfunded sites that we have out there. Currently, I don't have an estimate, at the funding level we're getting, on how much—how long it would take to reclaim all of the sites. But if you do some math, a $330 million unfunded obligation, at the rate of $15 million a year, which is about what we receive now, you're looking at a long time into the future, since we also add more sites each year.

Senator BUNNING. In 1991, a GAO report found that approximately 28 percent of the AML funds spent went to administrative expenses, including both State and Federal expenses. Do you believe that this statistic is still accurate? And, if so, is this figure

high compared to other programs? Is there any tracking information available to show how the AML funds are spent?

Mr. HOHMANN. Yes, sir, the tracking mechanism is maintained by OSM, I believe, on what portion of a grant is——

Senator BUNNING. OSM?

Mr. HOHMANN [continuing]. Yes—is expenses on administrative, versus on-the-ground reclamation costs. And I do believe the 28 percent is high, because it depends on how you identify, or how you define, "administrative costs." Depending on that, you can go very high—28 percent—or you can—if you include other costs, it can be low. And I think that the States, in the past few years, have looked—and OSM has looked—at this issue and found that it's more like a 12 percent cost that is associated with the administrative expense of the AML program, not 28 percent.

Senator BUNNING. Twelve percent, now.

Mr. HOHMANN. Yes, sir.

Senator BUNNING. We'll check that out. Last, over $3 billion worth of high-priority coal inventory nationwide remains to be reclaimed. This is about three times the inventory reported in 1986. Why does the inventory continue to increase, instead of shrink?

Mr. HOHMANN. Well, there are several reasons for that, Senator. First of all, the appropriation, the funding, for AML has decreased in years—over the years, and there has not been as much on-the-ground reclamation accomplished. Second, I believe that, because these sites are unattended, or unaddressed, they tend to get worse over time. And the cost of addressing them goes up.

And, finally, you have population movements into areas that were once remote. And the abandoned mines that were there posed no hazards to people, but as populations in the Virginia, West Virginia, Pennsylvania, Kentucky coalfields expands into formerly rural areas, and people live closer to abandoned mine sites, those mines now become problems, and they're added to the inventory.

Senator BUNNING. Are you telling me that people are moving closer—in eastern Kentucky—to the abandoned mine sites? Is there more population, or what are you telling me?

Mr. HOHMANN. That is exactly the case, Senator. There are abandoned mines that people inadvertently, or for whatever reason, move closer to and have children, and those children are playing out in what were once very remote areas, and now they're playing in subdivisions that have been created near abandoned mines. And those mines pose hazards to those children, where, once—before that, they were very remote, and no one got around them. They weren't even on the inventory.

Senator BUNNING. I want to ask Mr. Shope one more question.

Do you know how much Kentucky will receive in AML funding and how—over how long, under the Thomas and Rockefeller proposed legislation?

Mr. SHOPE. Senator, we do not have specific figures calculated out, for a very good reason. One is that there are a number of variables and assumptions that would have to be made to make those determinations, particularly under S. 1701, with the provision of the States collecting their own State-share. The number of States that would take advantage of that provision, and the program size of the States that take advantage of that provision, would dramati-

cally alter the amount of income that comes into the fund; and, thereby, it's safe to assume the appropriation levels that we would get would be significantly altered.

Senator BUNNING. Thank you, Mr. Chairman.

Senator THOMAS. Okay, thank you, gentlemen. Thank you very much. We appreciate your being here. We certainly all agree there's a problem to be resolved here, and we need to find a way to do it.

So, we'd like to now invite the second panel to come up, please.

We're very pleased to have our second panel here, made up of Mr. Andrew McElwaine, president and CEO of Pennsylvania Environmental Council; Mr. Charles Gauvin, president and CEO, Trout Unlimited; Mr. Daniel Kane, secretary-treasurer, United Mine Workers; Ms. Lorraine Lewis, executive director, the United Mine Workers Health and Retirement Fund; and Mr. Dave Finkenbinder, vice president, Congressional Affairs, National Mining Association.

Thank all of you for being here. We look forward to your testimony. As we mentioned before, if you can limit it to 5 minutes, we'd appreciate it. And your total statement will be put in the record.

So, Mr. McElwaine.

STATEMENT OF ANDREW McELWAINE, PRESIDENT AND CEO, PENNSYLVANIA ENVIRONMENTAL COUNCIL, HARRISBURG, PA

Mr. MCELWAINE. Thank you very much, Chairman Thomas, for this opportunity.

Let me also, just as an example of the Pennsylvania/Wyoming connection, bring you greetings from my maternal uncle, Thomas F. Strook, of Natrona County. And we also have a Wyoming—Wyoming County, Pennsylvania, and the entire Wyoming Valley of Pennsylvania, which is in the heart of our coal country.

Senator THOMAS. Good.

Mr. MCELWAINE. Mr. Chairman, Pennsylvania Environmental Council is a 35-year-old organization. We were created as a coalition of industry, environmental organizations, and public citizens, and we continue that to this day. So, we are a nontraditional environmental organization, to say the least.

The position I'm about to present has been approved by all of our members, corporate as well as environmental.

Mr. Chairman, the work is not done, as we have already heard, with title 4 of SMCRA. And I want to emphasize the remaining threat.

According to the U.S. Department of the Interior's Office of Surface Mining, since 1999 more than 40 people have drowned in mining pits and quarries. At least 15 deaths, and many more injuries, have occurred during the same time period in falls and ATV rollovers at quarries and pits. In just this year, Pennsylvania saw five more fatalities related to AML sites. Abandoned mine sites have left extensive dangerous high walls, open pits, coal-refuse spoil piles, open mines, and more than 3,000 miles of streams polluted by abandoned-mine drainage.

Past coal-mining practices have led to erosion, landslides, polluted water supplies, destruction of fish and wildlife habitat, and

an overall reduction in the natural beauty of the Eastern United States.

OSM reports that over 3.6 million Americans live within one mile of priority-one and -two AML sites. More than half, just over 1.6 million, of those listed live in the State of Pennsylvania.

With that in mind, Mr. Chairman, I'm here today not only on behalf of my organization, but more than 200 coalfield communities, conservation and watershed groups, and we have coordinated with similar groups from Chattanooga, Tennessee, to Scranton, Pennsylvania. We've all agreed, as Mr. Shope did, on a set of principles, and—rather than trying to lay out specific legislation.

Our principles are as follows:

We support continued funding from the AML fund for water-quality cleanup. It is absolutely critical that abandoned-mine drainage, which contaminated so much drinking and surface water, continue to be eligible for funding from title 4.

We also advocate keeping the current priorities—one, two, and three. These current priorities should be maintained, including the ability to fund water-related projects under priority two and three.

We support full appropriation to the States of future fees. And future collections to the fund should be fully spent for their intended purpose of cleaning up abandoned-mine problems.

We also encourage the redevelopment of abandoned mine lands for economic use. And we are beginning to see this happen, particularly in our Wyoming Valley. States should be able to use title 4 funds in ways that promote reclamation, leverage private investment, and, where it is appropriate, encourage redevelopment and reuse of these sites.

We also support provisions in last year's administration proposal to change some of the allocation. Particularly, we believe the allocation formula should be 60 percent historic and 40 percent current production in order to move forward on the billions needed for priority-one and -two reclamation.

We support proposals that would take the program off budget. We also support increasing the minimum program funding to $4 million. And, also, we believe that non-primacy States should get a guaranteed minimum.

We also support continued transfer of the interest, but not the principal, of the Combined Benefit Fund to our friends and neighbors, former mine workers.

We also support a lengthy extension of the program to 2025, Mr. Chairman.

With those principles, we regret that we cannot, at this time, support S. 1701 or S. 961, as we believe they would take the program in a different direction from supporting damaged coalfield communities. However, we do support H.R. 2721, introduced on the House side by Congressman Peterson of Pennsylvania. However, with that, I want to emphasize, I've heard a very positive set of statements from members of the committee, as well as from witnesses, about working together and trying to resolve our differences. I welcome Senator Allen's comments, earlier, to that point. And I want to emphasize that coalfield communities are very anxious for the future of this program and, based on that anxiety,

very willing to work with you, Mr. Chairman, and the staff in the future.

[The prepared statement of Mr. McElwaine follows:]

PREPARED STATEMENT OF ANDREW MCELWAINE, PRESIDENT AND CEO, PENNSYLVANIA ENVIRONMENTAL COUNCIL

INTRODUCTION

Mr. Chairman and members of the Committee, thank you for inviting me to participate in today's hearing. My name is Andrew McElwaine and I am President and CEO of the Pennsylvania Environmental Council, a statewide non-profit group that has offices throughout the state. I am testifying on behalf of the Pennsylvania Abandoned Mine Land Campaign, a coalition of over 200 Pennsylvania conservation groups, including 150 watershed organizations from all Commonwealth coalfield counties. Over the last two years, we have also worked with community leaders from ten states in an effort to formulate recommendations that have the broadest base of support.

I want to reiterate our profound appreciation for your interest in working for an effective AML reauthorization. To be successful, the AMLF reauthorization must combine necessary, predictable, mandatory funding without compromising existing environmental laws. It is essential to our state and others that the federal government extend and reform the abandoned mine land reclamation program as I will describe in my testimony. And of course an AMLF program that works to protect communities and restore environments also produces jobs and creates economic opportunities. We hope that our expressions of support and caution, aimed at helping you arrive at an agreement that truly works for communities in Pennsylvania and the other coal producing states, can help you resolve outstanding issues within the next few days.

HISTORY

Pennsylvania has the most abandoned mine land sites in the nation and has been a leader in improving the quality of its environment after many years of mismanagement. In 1968, Pennsylvania passed the Land and Water Conservation and Reclamation Act, a major initiative to address abandoned mine reclamation. This act spurred Operation Scarlift, which was instituted to clean up the damage caused by abandoned mines. It used a total of $141,000,000 to complete 500 stream pollution abatement projects, extinguish 75 fires, remove 150 areas of subsidence, and prevent air pollution at 30 sites of burning refuse banks.

Since that time, Pennsylvania has initiated several other programs that have provided state funding for abandoned mine reclamation. Most recently, under Governor Ridge in 1999, the state created its Growing Greener program which made available a substantial portion of $500 million for reclamation and stream clean ups. In July of this year, Governor Rendell signed into law Growing Greener II, which provides $625 million for stream clean ups and other environmental improvements. At least $60 million will be available specifically for AML related impacts.

Pennsylvania has also pursued an aggressive remining program, where the state has formed partnerships with the private operators and citizen groups to maximize the use of AML funds. DEP estimates that $950 million in federal and state money has been spent in Pennsylvania to deal with abandoned mine problems. As indicated earlier, a substantial portion of that funding came from state sources. We have adopted a strategic approach that identifies those sites that are most dangerous or having the greatest environmental impact and target our resources accordingly.

REMAINING ENVIRONMENTAL PROBLEMS

Despite our successes, significant environmental problems related to past mining practices remain. The National Abandoned Mine Land Inventory lists for Pennsylvania over $1 billion of Priority 1 and 2 sites. These numbers were calculated in the early 1980's, nearly a quarter century ago, and have not been adjusted for inflation.

These estimates reflect real problems. According to the US Department of Interior's Office of Surface Mining (OSM), since 1999, more than 40 people have drowned in mining pits and quarries. At least 15 deaths, and many more injuries, have occurred during the same time period in falls and ATV rollovers at quarries and pits. In the last year Pennsylvania saw five more fatalities related to AML sites. Abandoned mine sites have left extensive dangerous highwalls, open pits, coal refuse spoil piles, old mine openings, and more than 3,000 miles of streams polluted

by abandoned mine drainage. Past coal mining practices have led to erosion, landslides, polluted water supplies, destruction of fish and wildlife habitat, and an overall reduction in natural beauty.

The OSM reports that over 3.6 million people in the United States live within one mile of Priority 1 & 2 Sites. More than half, just over 1.6 million of those listed, live in Pennsylvania. (See Appendix A, which is taken from a white paper prepared on this topic by OSM in 2003). People continue to die, local economies are stymied, and ongoing environmental degradation is obvious to even casual observers. As is reflected in Appendix B, over 184,000 acres in our state still need to be reclaimed. And, Pennsylvania is not alone; other states face similar ongoing problems.

OVERVIEW OF WHAT WE SEEK:

Provided below are provisions that were crafted over a two year period in a collaboration of coalfield community leaders from ten states (Alabama, Illinois, Indiana, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Virginia):

- *Funding for water (Abandoned Mine Drainage)*: Abandoned mines leak acidic, alkaline, and metal-contaminated water, polluting public water supplies, destroying fish and wildlife habitat, depressing local economies, and threatening human health and safety. Pennsylvania is representative of eastern coal states with abandoned mine drainage (AMD) problems, and abandoned mine drainage is the largest contributor to water quality impairment in the Commonwealth. Over 3,000 miles of Pennsylvania's streams are impaired by AMD. *It is critical that abandoned mine drainage problems continue to be eligible for funding.*
- *Keep priorities 1, 2, and 3*: Three priority areas are eligible for funding to correct adverse effects of coal mining practices under Title IV. Priority 1 provides for the protection of public health, safety, general welfare, and property from extreme danger. Priority 2 provides for the protection of public health, safety, and general welfare. Priority 3 provides for the restoration of degraded land and water resources and the environment. States need to retain the discretion to use their allocations from the Fund for projects falling into any of the three priorities. *The current priorities should be maintained, including the ability to fund water-related projects under Priorities 2 and 3.*
- *Full allocation to states of future fees*: As of June 30, 2005, the Fund has an unappropriated balance of over $1.7 billion. The state share of this balance is approximately $1.1 billion. (Pennsylvania maintains the fourth highest balance at $58.4 million.) *Future collections to the Fund should be fully allocated for their intended purpose of cleaning up abandoned mine problems.*
- *Encourage redevelopment of abandoned mine lands*: As abandoned mine lands are reclaimed, they offer potential locations for economic development projects. 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 natural resources. For example, government facilities could be encouraged to locate on these sites rather than on previously undeveloped green spaces. *States should be able to use Title IV funds in ways that promote reclamation, leverage private investment, and, where it is appropriate, encourage redevelopment.*
- *Reformulation*: Many states that fueled the coal boom in the early and middle part of the last century currently have low coal production, yet they have the largest legacy of adverse mining impacts from before 1977. Currently, the federal share of collected monies is allocated based on 40% for current production, 40% on historic production, and 20% to the Rural Abandoned Mine Land Program (RAMP). It has been damaging to coalfield communities that RAMP has not been funded in the last eight fiscal years. If RAMP is retained, then it should be funded through same off-budget structure as the rest of the AML program. This will allow states with the most pre-1977 problems to correct them much more quickly. *The allocation formula should be changed to 60% historic and 40% current production.*
- *Take the program off-budget*: Each fiscal year, the President and Congress must appropriate monies from the fund as part of the federal budget process As a result, the Fund is subject to political pressures and fiscal pressures from other federal programs. *The fees collected to the fund should be returned to states and tribes without the need for appropriation each year, thus ensuring that the funds will be used for their intended purposes. This would enable states to better plan strategic multi-year AML reclamation projects.*

- *Increase the minimum program funding to $4 million*: 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 1990, this funding has been set at $2 million. In many years, minimum program states have received significantly less. Increasing this amount would help make up for past under-funding and ensure that states with significant AML problems but low production would be able to continue running effective programs. This potentially effects eleven states. *Annual funding for minimum program states should be raised to $4 million.*
- *Non-primacy states should get a guaranteed minimum*: States which do not have their own coal regulatory programs are not eligible for a 50% share of funds collected in the state or funding based on historic production. Federally managed (non-primacy states) programs should be guaranteed minimum program funding if they demonstrate the ability to operate an effective abandoned mine reclamation program. This would enable a state like Tennessee to mitigate the damage in one decade instead of four.
- *Maintain transfer of interest to the Combined Benefit Fund*: Interest generated on the Abandoned Mine Reclamation Fund is currently transferred to the Combined Benefit Fund to defray health care costs for retired miners and their dependents whose companies have gone bankrupt or are no longer in business. The CBF pays for health care expenses remaining after Medicare and Medicaid reimbursement and pays for prescription drugs. *The transfer of interest to the Combined Benefit Fund should continue with no fee reduction.*
- Extend the end date: The scope of the abandoned mine problem continues to outpace available resources. Based on current funding levels, projected future production, and estimated costs of cleaning up inventoried sites, it will at least 15 years, potentially more than 20 years to address abandoned mine problems. Extending the program 20 years would honor the intentions of the original law to unburden communities plagued by unreclaimed coal mines. *The program should be extended until at least 2025.*

ESSENTIAL PROVISIONS:

There are a number of provisions that my organization and the Pennsylvania coalition believe are essential for AML reauthorization to protect coalfield communities and restore damaged natural resources. First and foremost, we need to remember that this program was originally created to address the significant environmental problems facing Pennsylvania and other states. We should not lose sight of this, so we believe that reauthorization legislation should do the following:

1. Off-budget mandatory assured funding of AML programs in historic production states.
2. The environmental provisions included in H.R. 2721 should be incorporated within any AML reauthorization legislation:

   a. Minimum program states should receive $4million/year for the length of the program;
   b. Mandatory payments to states should be made within 30 days of collection, and no less frequently than semi-annually;
   c. Allow full state discretion in utilization of state set-aside funds, with state set-aside funds increased from the current 10% to 30%;
   d. Preserve Priorities 1, 2 and 3—essential for water quality restoration;
   e. Remining: PEC supports remining because there have been many successful projects, though we understand that it remains controversial within some coalfield communities. In appendix C, we outline some of the conditions that the coalition with which we are involved believes should accompany a remining program.

3. Keep AML reclamation fees at current levels with the current structure. In 1977, no inflation factor was built into the fee, so while the costs of AML reclamation have gone up significantly over the past 28 years, the fees have remained unchanged, and now represent a much small fraction of both the cost of coal and the cost of reclamation. Even with the fee unchanged, the program is not likely to collect enough money to complete AML restoration within 15 years.
4. AML Reauthorization period should be no less than 15 years, 20 is needed, because in past years so little AML money has been made available, so the restoration intended by Congress has not actually been funded.
5. AML reauthorization legislation should specify that the source of funding for AML programs should be AML reclamation fees

CONCLUSION

The legacy of past mining practices is still evident on the landscape and in the waters of Pennsylvania and other states. It adversely impacts our safety, environmental quality, economic viability, and overall quality of life. We have made progress, but our work is not done. It is essential to our state and others that the federal government extend and reform the abandoned mine land reclamation program. Our coalition believes strongly that the final legislation should include the provisions that I have listed above. Our communities and environmental quality depend on your action.

Again, thank you inviting me to testify. I am available to answer questions.

APPENDIX A

FROM US DOI OSM MAY 28, 2003 WHITE PAPER
"PEOPLE POTENTIALLY AT RISK FROM PRIORITY 1 & 2 AML HAZARDS"

APPROXIMATE NUMBER OF PEOPLE AT RISK

From a ½ mile radius of each priority 1 & 2 AML site in the continental United States, the national total number of people at risk is estimated at over 1.2 million. The individual State and Tribal range of people potentially at risk from priority 1 & 2 AML hazards is from 0 to 527,120 in the coal producing entities. At the 1 mile radius of each priority 1 & 2 AML site in the continental United States, the national total number of people potentially at risk rises to over 3.6 million people. This coincides with an individual State and Tribal range of people potentially at risk from 0 to 1,649,959 in entities that have produced coal. At both intervals, the Eastern part of the United States incurred the most people potentially at risk from priority 1 & 2 AML hazards.

State	People Potentially at Risk 1/2 Mile	People Potentially at Risk 1 Mile
Alabama	27,469	100,383
Alaska	148	596
Arkansas	4,490	17,782
Colorado	24,185	32,196
Illinois	49,331	101,348
Indiana	9,410	24,432
Iowa	3,440	11,602
Kansas	15,157	57,023
Kentucky	114,228	402,001
Louisiana	0	0
Maryland	9,161	30,969
Missouri	14,958	36,127
Montana	1,157	4,591
New Mexico	987	3,964
North Dakota	594	2,368
Ohio	56,626	169,198
Oklahoma	18,455	55,611
Pennsylvania	527,120	1,649,959
Tennessee	13,694	42,505
Texas	875	2,867
Utah	324	1,297
Virginia	47,932	140,577
Washington	9,280	16,255
West Virginia	265,758	693,161
Wyoming	2,387	9,716
Cheyenne River	3	11
Crow Tribe	5	18
Hopi Tribe	0	0
Navajo Nation	42	166
Windriver	4	19
Total/Average	1,217,220	3,606,742

APPENDIX B

DOCUMENTED UNRECLAIMED ABANDONED MINE LAND (AML) SITES, FEATURES, AND ACRES IN PENNSYLVANIA, BY COUNTY

County Name	Number of AML Sites	Number of Unreclaimed AML Features	Acres
Allegheny	263	763	4,514
Armstrong	313	1,548	17,772
Beaver	72	323	2,810
Bedford	39	167	1,128
Blair	12	72	766
Bradford	2	3	0
Butler	275	1,401	8,724
Cambria	265	1,374	4,973
Cameron	9	40	361
Carbon	30	270	2,827
Centre	121	709	5,866
Chester	1	2	0
Clarion	393	2,135	15,227
Clearfield	588	3,374	23,715
Clinton	49	233	1,441
Columbia	20	244	2,158
Crawford	1	5	28
Dauphin	10	86	410
Elk	101	619	4,053
Fayette	226	1,058	5,482
Fulton	5	14	244
Greene	34	130	511
Huntingdon	32	143	1,169
Indiana	278	1,555	8,400
Jefferson	319	1,817	10,441
Lackawanna	143	732	5,481
Lawrence	101	418	4,996
Lebanon	3	9	0
Luzerne	211	1,169	10,466
Lycoming	9	65	239
McKean	27	93	862
Mercer	74	284	2,237
Northumberland	97	951	6,331
Schuylkill	316	2,639	16,355
Somerset	185	923	3,152
Sullivan	8	32	52
Susquehanna	3	17	73
Tioga	46	209	925
Venango 67	279	1,956	
Warren	2	3	16
Washington	184	547	3,315
Wayne	8	30	94
Westmoreland	228	887	4,862
Wyoming	2	4	0
Total	5,172	27,376	184,431

Source: Pennsylvania Department of Environmental Protection; March 20, 2002

APPENDIX C

COALFIELD COMMUNITY REMINING RECOMMENDATIONS FOR AMLF REAUTHORIZATION FROM THE PA COALITION

Background: Despite many positive and successful remining activities, particularly in PA, there remain many serious issues with remining in PA and other historical production states. Among the most damaging remining activities are those conducted on steep slopes where, instead of cleaning up abandoned mine sites, strip

miners are expanding mine operations in ways that make existing environmental problems even worse.

To qualify as an AMLF activity, remining should meet these minimum standards:

- Should only be subsidized with AML money if the primary purpose and goal is reclamation
- Must demonstrate the reclamation required by SMCRA is feasible, and this must still be a condition of permitting of the activity
- There will be no reduction of environmental standards for that operation
- If a mining project that includes "remining" takes in additional acreage outside of the original AML site then AML funds should not be used to subsidize the mining outside of the AML area
- Removal of the financial risk to companies of bond forfeiture by use of AML money for performance bonds reduces the incentive to reclaim the site
- No waivers of reclamation fees
- Incentives and rebates will be given AFTER reclamation takes place, not prior to reclamation

Senator THOMAS. Okay. Thank you very much, sir.

Mr. Gauvin.

STATEMENT OF CHARLES GAUVIN, PRESIDENT AND CEO, TROUT UNLIMITED, ARLINGTON, VA

Mr. GAUVIN. Thank you, Mr. Chairman. I'm delighted to be here today. And, I must say, we were here about a year ago, as this process that you initiated was beginning, and I'm delighted to see that bridges are being built and we're coming closer to consensus on some of these important issues.

Trout Unlimited's a bit of a niche player in the AML equation. But the niche that we occupy is a very important one. Within the Eastern United States—in particular, in the more historical range of coal mining, surface mining—you have a host of problems involving water quality and ecological damage that are huge priorities for my organization—and, indeed, our national water-quality problems—that must be addressed.

I'll also mention, separately at the end, some issues in the West that we could productively address, as well.

But we're here not really to represent the effete fly fishing/trout-fishing community that wants to see streams reclaimed in their own right, and restored in their own right, but really to emphasize that trout, and the aquatic food web that supports them is very, very important to the ecological integrity of the Appalachian region and that trout are the keystone predators; by dealing with the water-quality problems that have so ravaged trout populations in mining country, you are doing a huge ecological service and, I might also add, doing a great deal for public water supplies and for a number of the environmental and public-safety and -health values that we all cherish and that Congress sought to conquer, to restore, and to address in SMCRA.

We, at Trout Unlimited, are the only national organization that's working on the ground to implement the OSM's Clean Streams Initiative and to work with States and some of their allocated money toward stream and watershed cleanup. We've developed some tremendous partnerships in that process. Most profoundly and recently in the State of Pennsylvania, working in the Kettle Creek Watershed, which is a key component, one of the five major tributaries, the west branch of the Susquehanna, which, as some of you may know, has a 14-mile dead zone. It's devoid of life—and that is a serious problem for the Chesapeake Bay and other downstream

basins—simply because of acid mine drainage in five key tributaries. We have worked very hard to develop technologies—passive treatment technologies that don't require a lot of energy, that have a long life, and essentially involve wetland restoration and other techniques to make this a practical approach, economically, environmentally, and from an engineering standpoint.

We are doing some of the same work in Kentucky on streams in the Daniel Boone National Forest. We've done work in the similar manner in other streams in Pennsylvania.

The OSM's Clean Streams Initiative is critical to that effort, as I mentioned, as well, the decisions by individual States to allocate some of the funding they receive through AML to cleanup programs.

I'd like to mention a few principles and recommendations that we would like to bring to the table, as I said, as a highly interested niche player in this process.

The first is that we retain the existing laws' priorities and the flexibility that's inherent in them.

The second is that we pick an authorization period that is at least a reasonable stab at what's needed to get the job done, and that would be, in our estimation, 25 years. And, you know, you look at the priority lists and you look at OSM's inventory, and that inventory gets larger on all the priorities as you delve more deeply. The estimates on our end are that, basically, to do a good job on watershed restoration and our pressing water-quality problems, you're looking at about $15 billion.

We support, therefore, maintaining the existing fee levels, and we would like to see mandatory funding and an increase in available funding for the Clean Streams Initiative. This has been a tremendous boon, something that we've been able to tap that's been created administratively.

And then, finally, I'm sure, of interest to you, Mr. Chairman, we would like to see a similar effort developed, and a similar program developed, to start reclaiming hard-rock-mine-damaged streams in the West. Forty percent of the western headwater streams are impaired by hard-rock-mine damage, and we think that SMCRA has provided a tremendous example that could be implemented on the ground to address that.

Thank you for the opportunity to present our remarks.

[The prepared statement of Mr. Gauvin follows:]

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

Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear today to discuss two bills currently before the Committee, S. 1701 and S. 961, both of which would reauthorize and amend the Abandoned Mine Reclamation Fund (AML Fund) created by the Surface Mining Control and Reclamation Act (SMCRA). TU commends you for holding the hearing in order to move forward on reauthorizing this important program, which is set to expire in 2006.

TU is a national 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 144,000 members in more than 400 chapters in 35 states. TU members generally are trout and salmon anglers who voluntarily contribute substantial amounts of their personal time and resources to aquatic habitat protection and restoration efforts. TU chapters invested over 460,000 hours of volunteer time into trout and salmon conservation in 2004.

Over the past several years, TU volunteers and staff have 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: long term reauthorization of, and increased funding for the AML fund will provide necessary additional money and resources for watershed restoration. Funding these efforts will have a positive impact on public health and safety as well as the environment.

Enacted into law 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. The law protects our Nation's people and resources by improving the health of watersheds that are affected by current and past mining practices. Completed reclamation projects conducted as a result of the law have improved the quality of tens of thousands of people's 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. After implementing the program for 27 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. Addressing the public safety risks posed by unreclaimed high walls, burning slag piles, and gaping holes in the ground has been, and should remain, the highest priority 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 mines. The states and 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 work we are doing benefits more than just trout streams. Because trout are the keystone predator in ecosystems, they are a critical barometer of water quality and overall ecological health. Bottom line, if the water is clean enough for trout, the water is clean enough for people.

The good news is that, although the problem is vast, practical solutions exist to fix it. TU, OSM and states are working together to address acid mine drainage problems. But the job is far from finished. We urge the Committee to move expeditiously to enact the reauthorization including increased funds 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. Much of the problem originated years ago from coal production that helped build America and fueled our war efforts during World Wars 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 may contaminate surface and groundwater.

In an effort to demonstrate how practical solutions could be applied to an otherwise daunting task, TU, OSM, 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. We estimate that an additional $8 million will be needed to complete the acid mine drainage cleanup on Kettle Creek.

TU and others are now looking to replicate our success in 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 mainstream 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. Overall, 72 percent of the 7,000 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 West Branch restoration work is modeled on the methods that TU and its partners have developed on the Kettle Creek watershed and the benefits of eliminating acid mine drainage in the area are numerous. For example, the potential for

fishery restoration on all of the degraded streams is phenomenal because most of them are potential trout streams.

Other benefits from abandoned mine restoration include increased property values and quality of life for those living in the area, improved hunting opportunities, and job creation. Pennsylvania estimates that for every million dollars spent on abandoned mine land restoration construction contracts, about 27 people are employed directly or indirectly. Similarly, in testimony submitted to the Committee last year, the State of New Mexico noted that AML projects are a source of jobs for New Mexicans and stated that, "all construction work is performed by private. contractors, almost all of whom are based in New Mexico."

In sum, 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 that is needed is a stable source of funding to contribute towards the overall cost.

The AML Fund currently provides some limited but extremely useful funds for cleaning up polluted water. More and stable funding is needed. TU is.familiar with two ways in which the AML Fund provides resources for cleanups:

- GSM's Clean Streams Initiative, currently funded at $10 million annually, derived from the federal share of the AML Fund, and
- Decisions made by individual states to allocate some of the funding they receive through the AML Fund to cleanup programs.

Started in 1994, the Clean Streams Initiative focuses on eliminating abandoned coal mine drainage and aspires to be a true citizen-government-industry partnership bringing together a unique combination of manpower, funding, and expertise. The initiative has so far funded 77 projects in 10 states, combining the skills of university researchers, coal industry figures, citizen groups, the business community, conservationists, and local, state, and federal representatives. The initiative has proven to be a particularly effective method of empowering volunteer-led restoration work.

The science and effectiveness of the cleanups paid for, in part, by the AML Fund, 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 a number of eastern states. 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 used 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 underway. The ultimate goal of our project work is to reclaim 17 miles of 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 of the Susquehanna as it flows downstream to the Chesapeake Bay.

COAL CREEK, TENNESSEE

In east Tennessee, TU's Clinch River chapter is working closely 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 problems 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.

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.

As you consider the two bills, we recommend the following:

Retain flexibility in existing law's priorities. S. 961 eliminates the "general welfare" provision of both priories 1 and 2. TU has no intention of advocating any changes, in the public health and safety priorities of the existing 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 current priorities.

Although S. 1701 also eliminates the "general welfare" provision of priorities 1 and 2, it does allow land, water and environmental restoration on land that is adjacent to a priority 1 site to be treated as priority 1. Moreover, we recognize and appreciate the fact that S. 1701 increases the allowable percentage, from 10% to 20%, of funds that states can set aside for acid mine drainage. While this language definitely helps, we prefer to retain the "general welfare" provisions in priorities 1 and 2 so that states can retain the full range of existing options in determining how to best prioritize the needs of communities.

S. 961 requires the Secretary to review all amendments to the AML inventory made after 1998 and remove sites that rely upon the general welfare standard. We disagree with this provision and, as mentioned above, recommend that general welfare projects in priority 1 and priority 2 continue to be funded.

Extend the authorization to 25 years. Everyone agrees that we need to "finish the job" of making communities safer and cleaner. S. 1701 would only ensure the viability of the AML Fund for 10 years and S. 961 extends the authority for 13 years. Most experts agree that given the complicated nature of the remaining challenges, a horizon of 25 years is more likely needed to complete the tasks before us. Reauthorization legislation should extend the life of the fund for the same time frame.

Maintain existing fee levels. S. 1701 reduces the existing fee levels which we feel is inappropriate given the overarching objective of putting money on the ground to complete projects. We recognize and appreciate that S. 1701 contains fee reductions that are less than those contained in the bill introduced by Senator Thomas during the 108th Congress. However, we respectfully request that the Committee retain the current fee structure as S. 961 does.

Provide mandatory funding and increase available funding for the Clean Streams Initiative. S. 1701 requires that OSM provide the existing balance of the state-share and tribal-share allocations to the states and tribes through mandatory payments not subject to the appropriations process. We agree with the concept of making AML funding mandatory because if our goal is to "finish the job," we should 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. Therefore, TU encourages the Committee to make the entire AML Fund off-budget and not subject to the annual appropriations process.

Moreover, we recommend that you dedicate $25 million annually from the off-budget Reclamation Fund to the Clean Streams Initiative. Specifically, we urge you to gradually increase funding for the Clean Streams Initiative from its current $10 million level up to $25 million annually over the 25 year authorization.

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

It is estimated that more than 500,000 abandoned hardrock mine sites litter the western landscape. 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 recommend that the Committee take a serious look at the problem and start developing a legislative solution to establish a fund for cleaning up abandoned hardrock mines.

As a first step, we recommend you authorize and fund a west-wide inventory of abandoned hardrock mines. Upon completion of such an inventory, interested parties will be better able to assess and prioritize cleanup projects.

To conclude, thank you for your leadership and commitment to reaching consensus on a long-term reauthorization of the AML Fund. TU pledges to work with the Committee to help craft appropriate amendments and move a bill to the Senate floor expeditiously.

Senator THOMAS. Thank you, sir.

Mr. Kane.

STATEMENT OF DANIEL J. KANE, INTERNATIONAL SECRETARY-TREASURER, UNITED MINE WORKERS OF AMERICA, FAIRFAX, VA

Mr. KANE. Good morning, Mr. Chairman and members of the committee. My name is Daniel Kane. I'm the secretary-treasurer of the United Mine Workers of America.

The UMWA is a labor union that represents the interests of coalminers and other workers in the coalfields across the United States and Canada for 115 years. And we appreciate the opportunity to speak before the committee to discuss the AML Reclamation Fund and its vital relationship to the UMWA health and retirement funds.

Representing people who live and work in the Nation's coalfields, the UMWA has a strong interest in both the reclamation of abandoned mine lands and the preservation of healthcare 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 of these goals.

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 moneys held in the AML fund to earn interest. In 1992, the Energy Policy Act extended the AML fees t0 2004 and authorized the use of AML interest to pay for the cost benefits for certain eligible retirees under the Coal Act. Congress has further extended the authority of OSM to collect AML fees through June 2006.

We believe that when Congress authorized the use of AML interest to finance the cost of healthcare for retired coalminers, 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 represented legacy costs of the coal industry and compelled a national response.

Unfortunately, since Congress expressed that intent some years ago, bankruptcies in the coal and steel industry, rapidly rising

healthcare costs, and a number of adverse conditions—court decisions—have eroded the funding status of the Combined Benefit Fund and placed it in jeopardy several times.

Now, Congress has intervened three times since 1999 to shore up the financial condition of the fund through emergency appropriations, but a long-term solution for the financial problems of the UMWA Health and Retirement Funds coincides with the need to authorize the AML fund. We believe that the reauthorization of the effort can, and should, meet several broad-based policy objectives. It should provide sufficient duration and level of tax to fund the reclamation needs. It should focus on priority-one and -two public health and safety projects. It should resolve the longstanding dispute between States and the OSM. And it should provide long-term financial solvency for the Health and Retirement Funds.

Mr. Chairman, opponents periodically allege that the benefits provided by the Health and Retirement Funds are a little generous and should be cut. While the costs to the beneficiary tend to be lower than some plans, I want to stress that these benefit plans and this retirement package represents a long-time labor package, between the UMWA and the industry, which began in 1946 in the White House. Coalminers and their widows gave up wages, they gave up numerous other contractual benefits, in return for their health benefits. Any cuts and in the loss of these benefits would severely hamper the living conditions in coalfield communities. Many of these retirees live on wages—the 1974 fund, for example, the pension benefits are less than $500 a month. For 1950 pensioners, it's less than $300 a month.

This was part of the deal. We can't go back and offer these retirees the money that they gave up in wages. We can't go back over decades and pay the other benefits that they sacrificed to get their retiree healthcare. We think that the retiree healthcare benefits have to be continued, because they represent a promise made at the highest levels of our government.

The debate is long since over. As a result of the Coal Commission, chaired by then-Secretary of Labor Elizabeth Dole after the Pittston dispute, the commission found that UMWA retirees have a legitimate expectation of the healthcare that was promised to them over the decades.

The Congress has already decided how that should be financed, and now we're talking about long-term solvency for that fund.

We appreciate the opportunity to appear here today and remind you that we have a broad coalition of various stakeholders who agree with the Cubin-Peterson-Rahall compromise, and we strongly support that compromise. And we thank you for the opportunity to appear here today and give our position.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kane follows:]

PREPARED STATEMENT OF DANIEL J. KANE, INTERNATIONAL SECRETARY-TREASURER, UNITED MINE WORKERS OF AMERICA

Mr. Chairman, members of the Committee, I am Daniel J. Kane, International Secretary-Treasurer 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 115 years. We appreciate the opportunity to appear before the Committee to discuss the Abandoned Mine Land Rec-

lamation Fund (AML Fund) and its vital relationship to the UMWA Health Funds. 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 affected by coal 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. Congress has further extended the authority of OSM to collect AML fees through June 2006.

The UMWA believes that when Congress authorized the use of AML interest to finance the cost of health care for retired coal miner, 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 was attempting 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 37,000 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 low interest earnings at the AML Fund have eroded those financing mechanisms and placed the CBF in financial jeopardy.

Bankruptcies in the coal and steel industries 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. For example, the bankruptcy of Bethlehem Steel in 2003 added nearly 4,000 new beneficiaries to the 1992 and 1993 Funds. Last year's bankruptcy of Horizon Natural Resources added about 1,500 new beneficiaries to the UMWA 1992 Fund and about 2,200 new beneficiaries to the UMWA 1993 Fund. These two bankruptcies alone added about 7,000 beneficiaries to the 1992 and 1993 Funds, more than 35% of the total population of the two funds. These continuing financial difficulties highlight the need for Congress to enact Coal Act reforms as part of its AML re-authorization.

Congress has intervened three times since 1999 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 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 prescription drug coverage expands to the Medicare population.

With bipartisan support from members of Congress, CMS announced an extension of the prescription drug demonstration program in early 2004 that extended the program until September 30, 2005. I am pleased to report that Secretary Michael Leavitt recently announced a further extension of the prescription drug demonstration until September 30, 2007. This demonstration extension is certainly welcome news; however, is does not alter the fact that there is a pressing need for a long-term solution to the financial problems of the UMWA health care funds.

The need for a long-term solution for the financial problems of the UMWA health care funds 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 UMWA health care funds.

Mr. Chairman, opponents periodically allege that the benefits provided by the UMWA Funds are too generous and should be cut. While the costs to the beneficiary tend to be lower than some plans, the benefits are not substantially more generous than other plans in comparable industries. The GAO compared the UMWA Funds benefits to retiree plans in manufacturing covering union and salaried retirees in 2002 and found that "*many features of the Fund's health plans are similar to those offered in the comparison plans. In particular, the Funds' coverage for hospital and physician services, which account for the majority of health care spending, is comparable to the coverage provided by the other plans.*"

Everyone should keep in mind that these retirees have made significant financial contributions to their health care, to the tune of $210 million that was transferred from their pension plan pursuant to the Coal Act. In addition over the years, miners traded lower wages and lower pensions for the promise of retiree health care. The average pension for a 1950 pensioner is $375 per month and their widows receive $155 per month in pension benefits. For the 1974 Plan retirees, the average pension is $532 per month while the average surviving spouse benefit is $373 per month. Thus, they do not have the financial ability to bear the kinds of co-payments that some retirees pay. To renege on the historic bargain they made over many decades to accept lower wages and pensions for this health care package would be a cruel and crushing economic blow.

In addition, this is an aged, fragile population that is sicker than the average Medicare population. A study performed by Mercer Human Resources Consulting found this population to have a 35% greater burden of illness compared to the Medicare population. Cutting the level of benefits for a population such as this would be a cruel response to the continuing financial crisis.

Two bills have been introduced in the Senate dealing with AML reauthorization—S. 961 by Senator Rockefeller and S. 1701 by Senator Thomas. Both bills would extend the AML fee collection (through 2019 and 2016, respectively) and provide continued AML interest transfers to the Combined Benefit Fund. Recognizing the growing orphan problem, S. 961 would also permit transfers to support orphan retirees in the 1992 and 1993 plans. While we appreciate both these efforts, we must recognize that they do not represent the long term financial solution that many have called for. In order to come up with a long term solution, the UMWA has been working with a coalition of Coal Act/AML stakeholders to devise legislation that is a modified version of S. 961 that would satisfy the needs of all parties, including the "reachback" companies and the "final judgment" companies. Representatives Cubin and Rahall made an effort to attach the legislation to the Energy bill during the House-Senate Energy Conference, but the effort failed partly because of confusion about the AML provisions of the bill. Since that time, many of those who opposed that effort are now supporting the coalition effort. The proposed legislation, known as the Cubin-Peterson-Rahall compromise, would:

1) Extend the AML program for 15 years and reduce the fees from 35¢ to 28¢ per ton for surface mined coal, from 15¢ to 12¢ for underground coal and from 10¢ to 8¢ per ton for lignite. States will automatically receive their share of AML funding on an ongoing basis.

2) Provide that the unallocated federal share of moneys that are paid to the U. S. Treasury under the Mineral Leasing Act after date of enactment shall be used to make payments to states and tribes of their unappropriated balance of state share collections.

3) Amend SMCRA to provide for annual transfers of AML Fund interest (including stranded interest and unappropriated RAMP funds) each year to the CBF, 1992, and 1993 Funds to pay health benefits of orphan beneficiaries and cover any deficits.

4) Provide that transfers to the 1993 Plan are limited to the cost of providing benefits to orphan beneficiaries as of December 31, 2005.

5) Beginning in January 1, 2006 sufficient federal on-shore mineral leasing and royalty revenues will be used as needed to pay for:

a. Health care costs of orphan retirees in CBF, 1992 and 1993 Funds.

b. Health care costs of CBF retirees attributable to the "reachback" companies.

c. Payment to "Final Judgment" companies equal to unreimbursed premiums (plus interest) paid to the Combined Benefit Fund.

To the extent such proceeds are insufficient, ongoing orphan obligations will be met from general funds as a mandatory appropriation.

6) Modify SMCRA allocation formulas to provide that states with higher reclamation obligations such as Pennsylvania, Kentucky and West Virginia, receive higher allocations.

7) Provide that "minimum program" states will receive $3.0 million per year.

This legislation has garnered support from the various stakeholders in the AML/retiree health care debate. It is a carefully crafted compromise and we believe it is worthy of support from this committee.

GAO STUDY

In 2002, the U.S. Government Accountability Office (GAO) issued a report on the Coal Act entitled "*Retired Coal Miners' Health Benefit Funds: Financial Challenges Continue.*" While the report was issued three years ago, its conclusions are still pertinent today. 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 GAO report clearly supports the positions the UMWA has advocated before Congress and the need for additional legislation. A promise made in the White House in 1946 was subsequently reaffirmed in 1992. Congress intended the Coal Act to be self-sustaining and self-financing, but various 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 industry retiree health care funding crisis.

This is a unique population and a unique situation. We are unaware of any other instance 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 Government Accountability 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 the coalition bill crafted by Representatives Cubin, Rahall and Peterson.

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 Department 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 in 1990 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 Aban-

doned 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, while most companies were paying the higher rate under protest, over 200 companies filed suit seeking to overturn the higher rate. In August 2005, the United States District Court for the District of Maryland issued a ruling in favor of the companies and enjoining the CBF from applying the higher rate. If the CBF ultimately loses the premium rate case, it will have to reimburse the operators for about $72 million in higher premiums that were collected prior to the court ruling.

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 signa-

tory 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. 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 escalating medical costs, loss of income, an increasing orphan population and an inadequate escalator have led to a continuing 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 Horizon bankruptcy in 2004 greatly increased the populations of the 1992 and 1993 Benefit Funds. 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 UMWA Funds and reinforce the call for a long-term solution.

NOW IS THE TIME FOR A LONG-TERM SOLUTION

Mr. Chairman, there is a growing bipartisan consensus that Congress needs to forge a long-term solution to the coal industry retiree health care financial crisis. 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.

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 UMWA Funds. I would be happy to answer any questions you may have.

Senator THOMAS. Thank you very much.

Ms. Lewis.

STATEMENT OF LORRAINE LEWIS, EXECUTIVE DIRECTOR, UMWA HEALTH AND RETIREMENT FUNDS

Ms. LEWIS. Mr. Chairman, members of the committee, I'm Lorraine Lewis, executive director of the Funds. On behalf of the trustees, I am pleased to accept the committee's invitation to testify.

Through a combination of collective bargaining and government mandate, retiree health benefit plans have been part of the fund since 1946. During this time, mine workers accepted more modest pensions, for example, in exchange for those health benefits. The 1990 Coal Commission report noted this fact.

The facts that follow here in my presentation relate to all three of the health benefit plans that we administer, including the Com-

bined Benefit Fund, which is the fund that receives the annual transfer from the AML fund.

The coal industry and Mine Workers Union have made important agreements during the past 59 years to require multi-employer contributions to the Health Benefit Funds. Unfortunately, as the actuarial projections show, the current funding arrangements will yield either increasing negative balances, in the case of the CBF, the Combined Benefit Fund, or the—excuse me—and the 1993 benefit plan, or increasingly burdensome premiums paid by operators, in the case of our 1992 benefit plan.

The CBF has 37,000 beneficiaries. The median age is 81. A full three-quarters of the population are elderly widows and spouses. Operators pay statutory premiums based on assigned beneficiaries. At the start, the beneficiaries themselves contributed $200 million from their pension plan to startup the fund. The CBF receives annual transfers from the AML fund to cover unassigned beneficiary costs. Growing deficits and cash-flow shortages pose the risk of reducing benefits in the summer of 2007.

Our 1992 and 1993 plans are orphan plans, with approximately 11,000 and 7,000 beneficiaries, respectively. Most beneficiaries in the 1992 plan, and all in the 1993 plan, have no employer in business to pay for their benefits. Both plans have had unexpected population increases due to steel-industry bankruptcies and the recent Horizon bankruptcy. Deficits and cash-flow shortages pose a risk of reductions in benefits in the 1993 plan in early 2006.

There is a special need for these health benefits. The beneficiaries in this population are typically female, elderly, and chronically ill. A recent study found that they bear a burden of illness 35 percent greater than the average for the general Medicare population.

The beneficiaries, the funds, and the Federal Government all reap advantages from the funds' aggressive managed-care cost-containment programs. These programs are designed to preserve beneficiary health status, prevent or minimize the effects of catastrophic illness, and avert the need for costly emergency services. The funds' managed-care strategies include an array of innovated coordination-of-care programs and disease-management programs.

Other programs contain initiatives to ensure the cost-effective use of available resources. Examples include contracts with hospitals and providers to pay Medicare levels for Medicare and non-Medicare beneficiaries, a cost-effective network of durable medical-equipment providers, co-pay incentives to promote use of mail-order drugs, and requirements for use of generic drugs.

The study I noted a moment ago found that expenditures by the funds in Medicare for the care of our beneficiaries are about 7 percent lower than would be expected for a population with their burden of illness. Since 1990, we have been involved in a risk-sharing demonstration program with Medicare, covering services provided under Parts A and B. We calculate that, between 1997 and 2004, the Government's share of the demonstration savings exceeded a total of $130 million. In 2001, the demonstration was expanded to include support for the fund's prescription-drug benefit. Under its terms, the funds are developing a program designed to help physicians improve the quality and cost-effectiveness of drug therapies

for chronically ill elderly Medicare beneficiaries. The addition of the drug component has enhanced the fund's value to Medicare as a laboratory for such innovations, especially relevant today as Medicare prepares to launch the new Part D prescription-drug program.

The funds are ERISA plans, with equal numbers of management and labor appointed trustees. They submit audited financial statements and other annual reports to the Departments of Labor, HHS, and Interior. GAO, the Interior Department's Inspector General, and the Center for Medicare Services have all reviewed the funds' programs and operations in the past few years.

And I'd be very happy to answer any questions you may have.

[The prepared statement of Ms. Lewis follows:]

PREPARED STATEMENT OF LORRAINE LEWIS, EXECUTIVE DIRECTOR, UMWA HEALTH AND RETIREMENT FUNDS

I am Lorraine Lewis, Executive Director of the UMWA Health and Retirement Funds. On behalf of the Trustees of the UMWA Combined Benefit Fund, the UMWA 1992 Benefit Plan and the UMWA 1993 Benefit Plan, I am pleased to accept the Committee's invitation to testify today.

THE PLANS AND THE POPULATIONS THEY SERVE

The three plans are continuations of the health benefit plans that were first provided to coal miner retirees and their families pursuant to an agreement between the Mine Workers Union and the Federal government in 1946 when President Truman seized the nations' coal mines to resolve a nationwide strike. Retiree health care was continued through collective bargaining in the industry from that time until passage of the Coal Act in 1992 and beyond. Historically, the Mine Workers have accepted lower wages and more modest pensions in exchange for more complete health care coverage. See Coal Commission Report (The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, November 1990) pages 32-41, 48-50. The beneficiaries of the plans reside primarily in the coal fields of Appalachia and are generally at the lower end of the economic ladder. For example, a coal miner's widow typical of the beneficiaries of the Combined Benefit Fund receives a pension from the UMWA 1950 Pension Plan of $155 per month.

According to the results of a 2004 study conducted by Mercer Human Resources Consulting, the beneficiary population served by the UMWA Funds bears a burden of illness 35% percent greater than the average for the general Medicare population. On a series of biannual surveys conducted by the UMWA Funds, over 50% percent of the responding beneficiaries reported their health as "fair" or "poor" as distinguished from the other available categories of "excellent," "very good," or "good." The GAO Report, "Retired Coal Miners Health Benefit Funds Financial Challenges Continue" of April 2002 (page 18) reached a similar conclusion.

MANAGED CARE AND COST CONTAINMENT PROGRAMS

Over a number of years, the plans have developed aggressive, successful managed care and cost containment programs. The Mercer study reported that the cost of health care for the plans was significantly less, by seven percent, than the level to be expected for the burden of illness found in the population.

These programs include contracts with hospitals and other providers to pay at Medicare levels for the plans' Medicare and non-Medicare eligible beneficiaries and the establishment of a network of durable medical equipment providers with bargained lower costs. Costs in the plans' prescription drug benefit programs are managed by use of co-pay incentives to promote use of mail-order drugs, requirements for use of generics when available in the absence of medical necessity for brand name drugs, and a preferred product program encouraging use of less expensive therapeutic equivalents in important drug classes. The plans also employ expert medical management teams to ensure the most effective courses of treatment, especially for beneficiaries with a high burden of chronic illness, and these services help to reduce hospital admissions and save costs over the long term. A more complete

description of the UMWA Funds managed care and cost containment programs is found in Appendix A.*

ERISA GOVERNED HEALTH CARE PLANS

All three of these health plans are employee welfare benefit plans within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"). As ERISA fiduciaries, the Trustees do not advocate any particular legislative proposal. Since Congress first considered the Coal Industry Retiree Health Benefit Act of 1992, however, the Trustees have recognized all efforts by members of Congress to resolve the problems of continuing the promised health care for retired coal miners and their dependents as constructive, and, in the interest of the plans' participants and beneficiaries, they have made staff available to respond to requests for information that might be relevant to these considerations.

Each of the plans is a separate employee benefit plan under ERISA, each with its own population of beneficiaries, separate funding mechanism and plan of benefits, and each with its own board of trustees. The Coal Act requires the Combined Fund Trustees, to the maximum extent feasible using available plan resources, to maintain the level of benefits provided by the predecessor plans in 1992, and the Act requires the 1992 Benefit Plan to guarantee this same level of benefits.

Pursuant to the Taft-Hartley Act, an equal number of trustees are appointed by the UMWA and by employers who support the plans. While some individual trustees serve on more than one of the plans, the board of each plan is required by ERISA to use that plan's assets in accordance with the written plan documents and exclusively for the plan's beneficiaries. Consistent with these requirements, however, these plans derive certain advantages from receiving joint administrative services pursuant to agreements with the UMWA 1974 Pension Trust for shared office space and staff services.

CONTRACTS WITH SERVICE PROVIDERS, DEPARTMENT OF LABOR AND MEDICARE

The three plans also pool their bargaining power to jointly enter into contracts with a medical claims processor, a pharmacy benefit manager, a medical management vendor, and a network of cooperating health care providers. Significantly, the three plans also jointly contract with the Medicare program and with the Department of Labor's Black Lung program to provide federally funded benefits to their beneficiaries.

Since 1990, the Funds' health care plans' contract with the Medicare program has taken the form of a demonstration project under which the Funds have received capitation payments in exchange for providing Medicare Part B benefits to Medicare eligible beneficiaries. Since 1997, the demonstration contract has included a risk sharing arrangement covering services delivered to eligible beneficiaries under Medicare Part A. Beginning in 2001, as part of the continuing demonstration project under contract with the Medicare program, the Funds have conducted a prescription drug demonstration under which the UMWA Funds three health plans operate a pilot program designed to help physicians improve the quality and effectiveness of prescription drug therapy provided to elderly chronically ill beneficiaries who receive their care under fee-for-service arrangements. In exchange, the Centers for Medicare and Medicaid Services ("CMS") pays a portion of the cost of providing prescription drugs to Medicare eligible beneficiaries under the UMWA Funds' plans of benefits. The plans have applied for renewal of the demonstration project and on September 20, 2005, CMS announced that the demonstration would be extended to September 30, 2007. While some terms remain to be worked out with CMS, the figures in Appendix B take this renewal of the prescription drug demonstration into account.

THE COMBINED BENEFIT FUND

The Coal Act directed the merger of two existing collectively bargained health benefit plans, the UMWA 1950 and 1974 Benefit Plans, to form the UMWA Combined Benefit Fund to cover only those beneficiaries already covered by those two plans on July 20, 1992. This closed the Combined Fund population to new retirees. This population was then approximately 108,000. Reduced by mortality, this population is now approximately 37,000, composed of approximately 8,500 retired mine workers and 28,500 dependents, of whom approximately 22,000 are widows of mine workers. Combined Fund beneficiaries are elderly, their median age is 81. Their me-

* Appendixes A and B have been retained in committee files.

dian household income, based on a survey done in 2000, was $17,076. Approximately 94% of this population is Medicare-eligible.

The Coal Act requires the Combined Fund to have seven trustees. Two are appointed by the UMWA. There are two management-appointed trustees, one appointed by the Bituminous Coal Operators Association ("BCOA"), and the other appointed by the three operators who, among those that did not sign the 1988 National Bituminous Coal Wage Agreement, have the largest number of beneficiaries assigned to them. The three remaining "neutral" trustees are appointed by the other four.

Under the Coal Act, the Social Security Administration ("SSA") assigns Combined Fund beneficiaries to coal industry operators who signed Coal Wage Agreements with the UMWA and employed the retired miners who were, or whose widows were, primary beneficiaries of the 1950 or 1974 Benefit Plan at the time of the Coal Act's enactment.

Assigned operators are required to pay premiums for each assigned beneficiary in accordance with a premium rate set by the SSA pursuant to a formula set out in the Act. They also pay a proportionate share of death benefit premiums and of premiums for unassigned beneficiaries.

Unassigned beneficiaries.

Unassigned beneficiaries are those whose employers have gone out of business. There has been a steady shift within the Combined Fund's population from assigned beneficiaries to unassigned beneficiaries as operators have ceased business activity, with this shift increasing due to recent steel industry bankruptcies and the Horizon Natural Resources bankruptcy. In 2005 the average unassigned population has been approximately 16,700.

To avoid as much as possible the requirement that operators pay for expenses of beneficiaries who did not work for them, the Coal Act required that the beneficiaries themselves contribute $210 million from the UMWA 1950 Pension Plan, the plan that provided most of their pensions, primarily to cover unassigned beneficiaries' expenses during the first three plan years of the Combined Fund's operations. Beginning October 1, 1995, the Coal Act and the corresponding 1992 amendments to the Surface Mining Control and Reclamation Act ("SMCRA") provide for an annual transfer to the CBF of the interest earned by the Abandoned Mine Lands Reclamation Fund ("the AML Fund") to cover unassigned expenses. Transfers occur in years when fees are required to be paid to the AML Fund. This requirement, set by the 1992 amendments to expire on September 30, 2004, has been extended, most recently to June 30, 2006 by this year's Interior Department Appropriation Act. The SMCRA also provides the Secretary of the Interior with rulemaking authority to establish additional fee requirements beyond the expiration date sufficient to continue the program of annual transfers to the Combined Benefit Fund.

Financial difficulty and the risk of reducing benefits.

Since 1999, for two primary reasons, the Combined Fund has faced the prospect of deficits and the risk of reducing benefits. First, the premium rate increases prescribed by the Coal Act have not kept pace with the increases in health care costs, especially the costs of prescription drugs and the increase in utilization of health care as the population ages toward the end of life. Second, a long-running litigation between operators and the Social Security Administration and the Combined Fund Trustees regarding the Coal Act's premium rate formula has reduced or threatened to reduce the premiums paid by assigned operators by ten percent. To avoid the need for reducing benefits, Congress has on three occasions enacted special appropriations from interest earned by the AML Fund to be transferred to the Combined Fund. The amounts of these appropriations were: in 1999, $68 million; in 2001, $53 million; and in 2003, $34 million.

Most recently, on August 12, 2005, the U.S. District Court for Maryland ruled in favor of the operators in a phase of the ongoing premium rate litigation, requiring the Social Security Administration to re-establish lower rates for all operators. The Trustees of the Combined Fund have appealed this decision to the Fourth Circuit.

Through July 31, 2005, the Combined Fund had received from assigned operators and related persons $72,544,000 in payment of premium differential assessments at rates set by the Social Security Commissioner pursuant to the Commissioner's June 10, 2003, Premium Decision that has now been set aside by the Maryland District Court. Based upon cash flow projections, the Funds' Comptroller has calculated that, assuming return of this differential premium amount in the form of credits against the monthly premium obligations of assigned operators who made premium differential payments, and assuming an extension of the Combined Fund's Medicare Prescription Drug Demonstration Project that has recently been announced, at an

estimated funding level of $73,391,417 for plan year 2006 and $65,643,862 for plan year 2007, disbursements for medical benefits, death benefits and administrative costs will exceed cash on hand and receipts from income in the month of August 2007. At that point, the Combined Fund will be in a "cash negative" position. The Combined Fund Trustees have decided that, if such a cash negative position is reached, they must reduce benefits and they would be required to advise beneficiaries of such reductions some number of months in advance of such action.

Appendix B sets out projected total population and unassigned population, as well as projected year ending fund balances and annual deficits in the Combined Fund.

THE 1992 BENEFIT PLAN

The Coal Act requires that all coal industry operators who were providing single employer health plans pursuant to a Coal Wage Agreement with the UMWA at the time of the enactment must continue those plans in effect for retirees who retired before October 1, 1994. The Coal Act also required the UMWA and BCOA to create the UMWA 1992 Benefit Plan. The population covered by this plan includes: 1) those who would have been covered by the 1950 or 1974 Benefit Plan but were not covered by the Combined Fund because their eligibility was established after the cut-off date in 1992; and 2) those who were entitled under the Coal Act to continue receiving health benefits under a single employer health plan, but do not receive those benefits because of the employer's failure to provide them. Usually this is because the employer has gone out of business.

The median age of the 1992 Plans' beneficiary population is 72. This population's median household income, based on a 2000 survey, was $19,800, and approximately 80% of the population is eligible for Medicare.

Orphan retirees and their health care costs.

The 1992 Plan is a continuation, mandated by statute, of the industry's undertaking to provide health benefits to retirees known as "orphans," those whose industry employers have gone out of business leaving the retiree and dependent family members without an employer to sponsor their benefits. They correspond to the unassigned beneficiaries in the Combined Fund.

Funding of 1992 Plan is through "per-beneficiary premiums" required to be paid by last signatory employers to whom retiree and beneficiaries may be attributed and by "prefunding premiums" paid by 1988 Agreement operators. Because most of the Plan's population cannot be attributed to any employer that is still in business, most of the Plan's expenses are paid by the operators who pay prefunding premiums. The prefunding premium cost is therefore equivalent to the cost of orphan retirees and beneficiaries in the 1992 Plan, and this is a cost paid by operators who did not employ any of the orphan miners in question. The amount of prefunding premium paid by each 1988 Agreement operator is determined by the number of retiree beneficiaries the operator has covered by its single employer health plan mandated to be continued by section 9711 of the Coal Act. (Hence the term "9711 plan.") In addition, operators who provide single employer 9711 plans must post security with the 1992 Plan to pay for three years of benefits in case the 1992 Plan must take over their obligation to provide benefits.

The 1992 Plan's population was expected to grow as normal attrition of some industry employers occurred. Unfortunately the orphan population of the 1992 Plan has jumped up dramatically since 2002, because of the major steel industry bankruptcies and the Horizon Natural Resources bankruptcy. For 2002, the 1992 Plan's average population over the year was 6,432; for 2005 the Plan's average population is 11,392. If there are no more substantial shifts of retiree populations to the 1992 Plan from failing operators, the population is expected to gradually decline through mortality. The prefunding premium cost, the cost of orphan retiree health care, however, is expected to climb sharply because the security bond posted by a substantial failing steel industry operator will have been exhausted and because of the persistent rise in health care costs, especially the costs of prescription drugs. Thus the orphan retiree health cost of the 1992 Plan is expected to rise from around $16 million this year to $26 million next year, reach approximately $60 million in the last three years of this decade and continue to rise thereafter.

Appendix B sets out the current and projected population and the current and projected costs of providing benefits to orphan in the 1992 Plan.

THE 1993 BENEFIT PLAN

Through collective bargaining the UMWA and BCOA have created the UMWA 1993 Benefit Plan to continue the industry's undertaking to provide health care to orphan retirees, covering those who retired after the September 30, 1994 cut-off

date for coverage under the 1992 Benefit Plan. The plan has strict rules requiring that, before retirees and their dependents are eligible, their last signatory employer must have had an obligation to contribute to the 1993 Plan and actually have contributed. Funding for the 1993 Plan has come from employers' contributions based on hours worked in the mines, currently $0.50 per hour, and also from annual $2000 premiums, and in 2005 a separate one time $3000 premium.

The 1993 Plan's population has a median age of 59 and had a median household income of $19,056, based on a survey in 2000. Approximately 38% of this population is Medicare eligible.

Escalating population and costs; the risk of reducing benefits.

Like the 1992 Plan, a moderate rate of growth in the population of the 1993 Plan was expected, and like the 1992 Plan, this expectation has been upset by recent bankruptcies in the steel industry and especially by the Horizon Natural Resources bankruptcy, causing the population to double, from less than 3,500 to approximately 7,000 in the last two years.

Because of this increased population and the increased health care costs, the 1993 Plan faces the risk of reducing benefits. The Plan's governing documents provide that, if at specified periodic valuations the value of the Plan's net assets available for plan benefits fall below $2 million, the Trustees are required to reduce benefits sufficiently to achieve solvency by the end of the current Coal Wage Agreement, December 31, 2006. Current actuarial projections indicate that this threshold may be reached in early 2006.

Appendix B sets out the projected population and the projected year ending balances and annual deficits for the 1993 Plan.

OVERSIGHT

As ERISA plans, all three of the plans must be administered by boards of trustees who must comply with the fiduciary requirements of ERISA, including avoiding prohibited transactions, prudent asset management and administration for the exclusive benefit of participants and beneficiaries. Trustees may be held personally liable for any breaches of these duties. Each plan must submit an annual report to the Secretary of Labor (Form 5500), that must include the report of an independent auditor on the annual financial statement of the plan.

In addition to the requirement of an annual audited financial report, the three plans must submit an annual cost report to the Medicare program under the Medicare contract, and this report is also subject to an annual audit.

The Combined Fund is subject to an annual review by its independent auditors of its transactions with the Office of Surface Mining regarding transfers from the AML Fund, and this transfer program has also been audited by the Department of Interior's Inspector General.

Finally, because of continuing interest by the Congress, the Government Accountability Office has conducted reviews on several occasions, most recently in 2002.

I would be pleased to respond to any questions the members may have.

Senator THOMAS. Okay. Thank you very much.

Mr. Finkenbinder.

STATEMENT OF DAVID FINKENBINDER, VICE PRESIDENT, CONGRESSIONAL AFFAIRS, NATIONAL MINING ASSOCIATION

Mr. FINKENBINDER. Thank you, Mr. Chairman, members of the committee. On behalf of the National Mining Association, I want to express our appreciation for this opportunity to comment on the administration and performance of the AML program established under the Surface Mining Act.

The AML program was established with the principal objective to restore unreclaimed lands mined prior to August 3, 1977, that pose threats to public health and safety. AML, which is paid by on each ton of coal produced and sold to fund the program, was originally authorized until 1992, but has been extended several times, as we have heard.

The current reauthorization expires on June 30, and I'm sure many viewpoints expressed here today about the remaining re-

quirements and the need to extend the fee to support those requirements have been, and will be, presented.

While various interests of NMA's membership have dictated that NMA have no position on the specific related to AML reauthorization or the coal-miner benefits, NMA will provide observations about the history of the program and various public-policy considerations regarding the future of the program.

Since 1978, the coal industry has contributed more than $7.5 billion to the AML fund. OSM reports that, as of 2002, about $1.62 billion of high-priority abandoned-mine inventory has been reclaimed. Another $320 million has been used to reclaim priority-three sites, and $285 million have been used for non-coal projects. The appropriations from the AML fund for this period total $5.7 billion. In other words, less than 40 percent of the money appropriated is finding its way to on-the-ground reclamation of inventory of coal and non-coal projects. Placed in the context of high-priority coal sites, the principal mission of the project—of the program, less than 30 cents on every dollar appropriated from AML reaches its objective.

As we have stated in our written testimony, based on National Academy of Sciences and OSM reports that have been issued over the years, the inventory of priority sites has grown, along with the number of reclaimed sites, the fees collected, and the appropriations from the fund. For example, in 1986, NAS prepared a mid-course review for the program. At that time, NAS found that most States expressed confidence that they would complete their reclamation of priority-one and -two sites by 1992. By 1992, the total revenue of the program had reached $3.2 billion, and $870 million worth of high-priority coal inventory had been reclaimed, and the remaining inventory was now $2.6 billion. Now the high-priority coal inventory is almost $3 billion. And after $5.7 billion in appropriations from the AML fund, only $1.8 billion in high-priority sites have been reclaimed. It looks like we're going backward.

We hear the job is not finished. By June 2006, the coal industry will have paid $8 billion into the fund. How much will this take? We don't know.

In our written testimony, we have set out several questions facing—faced in dealing with the current program structure and requirements. Not surprisingly, each constituency will have different answers and different preferences.

The first question is: Do we need, can we afford, multiple delivery mechanisms and subprograms that divert funds away from high-priority projects? For example, the RAMP program and another one where States can set-aside funds in anticipation of the fee expiring. The question would be begged: Why set aside fees for a future use and then ask the industry to keep paying fees because the job is not finished?

Should the current allocation and distribution formula be replaced with a different system that takes into account the changes in the coal mining and the—excuse me—in coal mining since passage of the—of SMCRA?

What good are priorities if there are so many of them and there is no overarching requirement to abide by them?

Fourth, why does the high-priority coal inventory serve as—does the high-priority coal inventory serve as an accurate benchmark for success? Each time the goal gets closer, it is moved back.

So far as administrative costs are concerned, how much do we need to spend to learn how to spend?

In light of the foregoing, what level should the fee be? And how much more should the coal industry pay into the AML fund? The job is not finished. The lack of AML fees is not the reason.

Mr. Chairman, thank you, again, for the opportunity to present NMA's observations.

[The prepared statement of Mr. Finkenbinder follows:]

PREPARED STATEMENT OF DAVID FINKENBINDER, VICE PRESIDENT, CONGRESSIONAL AFFAIRS, NATIONAL MINING ASSOCIATION

Mr. Chairman, members of the Committee, on behalf of the National Mining Association, I want to express our appreciation for this opportunity to comment on the administration and performance of the Abandoned Mined Land (AML) Program established under the Surface Mining Control and Reclamation Act of 1977.

The AML Program was established with the principal objective to restore unreclaimed lands mined for coal prior to August 3, 1977 that pose threats to the public health and safety. The 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 June 30, 2006, there will undoubtedly be many viewpoints expressed today about the remaining requirements and the need to extend the fee to support those requirements. In this regard, Mr. Chairman, NMA has no position on the Coal Act or issues surrounding the reauthorization of the AML, but offers some observations about the history of the program, and presents various considerations to assist you and your colleagues in making public policy decisions about the program's future.

REVENUES AND EXPENDITURES

Since 1978, the coal industry has contributed more than $7.5 billion to the AML Fund. The Office of Surface Mining (OSM) reports that as of September 30, 2002 about $1.62 billion of the high priority (Priority 1 & 2) abandoned coal mined lands inventory has been reclaimed. Another $320 million has been used to reclaim priority 3 coal sites, and $285 million for non-coal projects. Appropriations from the AML Fund for this period totaled about $5.7 billion. In other words, less than forty per cent of all the money appropriated is finding its way to on-the-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—less than thirty cents of every dollar 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 Review 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 as 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 $5.7 billion in appropriations from the AML Fund, only $1.62 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 mined 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 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% 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 next year, the coal industry will have paid $8 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 $3 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 as of last year had accumulated $331 million which cannot be used for other purposes unless expressly reprogrammed by Congress. 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 (pre-1977) 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 of 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 approximate or exceed the amounts 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 appears 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 in order 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 Mine 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.

Mr. Chairman, thank you again for the opportunity to present NMA's observations on the history of the AML program. We hope the various considerations will assist you and your Subcommittee as you address the public policy decisions regarding the coal AML program.

Senator THOMAS. Okay. Thank you very much, sir. We appreciate it.

Mr. McElwaine, support for the bill introduced by Mr. Peterson—as you know, the bill paid through revenues primarily generated in the West. Do you have any suggestion on how we generate additional revenues from the Eastern part of the country? Or do you suggest transferring all the money from the West to the East?

Mr. MCELWAINE. Well, Mr. Chairman, the industry has benefited significantly from the existence of the AML fund. Since it was created, in 1977, Congress has, on the basis of the existence of the AML fund, exempted coal mining from the provisions of the 1980 and 1987 Superfund statutes, as well as the 1984 RCRA, subtitle C, statute. And so, Mr. Chairman, if we're going to give relief to the industry, on the one hand, in terms of paying for the Abandoned Mine Land Fund, I think Congress needs to go back in to Superfund and RCRA and look at those exemptions. I mean, there clearly was justification for those exemptions, because the—you could say, "Well, the industry is covered by AML, therefore that should take care of the Superfund liability and RCRA." But now, if we're going to say, "Well, let's not cover them with AML anymore," then I think we need to go back into Superfund, and we need to go back into RCRA, and say, "Gee, maybe we need to put some of these burdens and these obligations on the industry, instead."

Senator THOMAS. I see. My question, of course, was on the allocation, or the fund it comes from, and where you spend it, but I understand.

Mr. Gauvin, does Trout Unlimited have any reactions, particularly, to the re-mining proposition?

Mr. GAUVIN. We believe that re-mining is a legitimate technique of achieving some of the water-quality objectives that we would like to achieve. And there are some places in coal country where remining is the best approach to dealing with acid mine drainage. So, properly done, we're fine with it.

Senator THOMAS. Sometimes, I suppose a reclamation project doesn't really have anything to do with water quality.

Mr. GAUVIN. There are certainly some parts of the country where reclamation often has little to do with water quality.

Senator THOMAS. Little to do with it.

Mr. GAUVIN. But there are places, entire regions of the country, where reclamation issues are largely about water quality.

Senator THOMAS. Mr. Kane, you indicated that the healthcare were paid by interest on the trust fund balances.

Mr. KANE. That's right.

Senator THOMAS. And, of course, the reason there's interest is because the money hasn't been paid out of the fund that's prescribed under the law. How would you resolve that?

Mr. KANE. Well, one of the things that I would recognize is the fact that Congress has already made a decision on this issue, back in the early 1990's, when they determined how the funding would be established. And it was their intent, we believe that these funds would have an ongoing and stable basis of funding to provide the healthcare benefits.

One of the things that we think has to be balanced out is the mine reclamation—the reclamation of abandoned mine lands—and

also the healthcare costs of retired miners. Both of these are legacy costs of the industry.

The AML fund is an ongoing fund, and we have strongly supported, along with numerous other of the stakeholders, its reauthorization. We think that's extremely important.

Senator THOMAS. But my question was—under the original bill, moneys were supposed to go to the States. But they didn't go to the States, and, therefore, created a fund, and, therefore, there's interest to pay what you're talking about.

Mr. KANE. That's right, and——

Senator THOMAS. If you went by the law and distributed the fund, there wouldn't be that much interest.

Mr. KANE. Well, we're certainly not against the ongoing distribution of funds for mine reclamation. That is something that we think has to be ongoing. As I said earlier, we do support the cleaning up of these abandoned mine lands. However, every time funds are collected, they're going to be invested somehow, and Congress decided to invest those funds to earn interest. And there was something that had to be done with that interest. It could either stay in the fund—they felt that it was the logical thing to do to use those for retiree healthcare costs. So, we're not against—we're not against the use of funds for the cleanup of abandoned mine lands, but we also think that there's going to be interest, always—there's going to be funds available, and this represents a logical way to use those funds.

And I want to restate, this is a debate that was held back in the early 1990's——

Senator THOMAS. I know, but my question is—the funds are there, because the funds haven't been distributed. Isn't that true?

Mr. KANE. Well, one of the reasons that we came here today was to address that issue. And we think that the compromise reached by Representatives Cubin, Rahall, and Peterson addresses that.

Senator THOMAS. To take the money from somewhere else.

Ms. Lewis, you mentioned the age of these folks is generally pretty old.

Ms. LEWIS. Yes, sir.

Senator THOMAS. So, they're eligible for Medicare, is that true?

Ms. LEWIS. In our population, currently of about 50,000 beneficiaries, the Medicare eligibility funds all—across all three funds is about 68 percent. The highest—excuse me, it's 84 percent—the highest eligibility is in the CBF, which is at 94 percent. The 1992 plan is 80 percent. And then the 1993 plan is 38 percent.

Senator THOMAS. I see. I can't remember the details, but there's been discussion about different groups coming in. When did the original beneficiaries begin to be recognized?

Ms. LEWIS. Well, the funds were established in the 1940's, 60 years ago, under—there was originally a—or 1950——

Senator THOMAS. No, but I mean, when the funds to——

Ms. LEWIS [continuing]. Under the——

Senator THOMAS [continuing]. Offset the——

Ms. LEWIS. Under the Coal Act of 1992, the statute required the establishment of the Combined Benefit Fund, which combined two funds, a 1950 fund and a 1974 benefit fund. They became the Com-

bined Benefit Fund. The population was about 108,000 beneficiaries, and it was a closed population.

Senator THOMAS. What, generally, do you see in the future? When these people reach older age, are they going to be replaced by others, or what—how do you——

Ms. LEWIS. Not in the Combined Benefit Fund. The mortality rate, ultimately, it's right about 9 percent a year right now, and there will just continue to be mortality and deaths, and, ultimately, the fund will no longer be populated.

The other fund that was established in 1992 was the 1992 benefit fund.

Senator THOMAS. Yes.

Ms. LEWIS. And its population, essentially an orphan population, because the contributing—the paying employers are out of business. That fund probably, at this point, based on our information, has reached—it's at the high end, at 11,000. It will—it's pretty much stabilized, based on our projections about what we think is coming down the road, and it will ultimately drop off, as well. And our Attachment B to our longer testimony shows those numbers in the——

Senator THOMAS. When, generally, would these benefits expire? Would that no longer be necessary? Or is there a time things end?

Ms. LEWIS. Let me just check. I'll have to provide that for the record, Senator.

Senator THOMAS. If you would, please.

Mr. Finkenbinder, how do you respond to the idea that there will be an increase in priority sites due to an increase in population density? Is that a concern to you?

Mr. FINKENBINDER. It certainly appears to be the case. I'm not sure where it's going to occur. There's a good possibility that it can occur. It has in some of the more populated regions—Evansville, Indiana, for instance. However, Evansville also, I thought, has a zoning prohibition on coal mining, and most of the mines have closed down there. So, it's the older mines, I think, that are coming into contact with more populated areas. And I think the newer mines, as folks that have been out to our mines have seen, are located in more remote areas.

Senator THOMAS. I see.

Mr. FINKENBINDER. Specifically, I don't have any statistics to support or deny that.

Senator THOMAS. Okay. Thank you.

Senator Bunning.

Senator BUNNING. Thank you, Mr. Chairman.

Mr. Finkenbinder?

Mr. FINKENBINDER. Yes, sir.

Senator BUNNING. I understand that the National Mining Association has coal companies on both sides of the AML issue, with only some having healthcare issues. What do you see as the biggest issue affecting the different coal companies' constituencies?

Mr. FINKENBINDER. That's a good question. I think that the questions that I have laid out here are the ones that are the concerns from the AML perspective. So far as the benefits perspective is concerned, I am not privy to conversations for the last—since essen-

tially 1992, the National Mining Association has stood down on these because of the various positions taken by our membership.

Senator BUNNING. I would like to go back to a question that the chairman asked both the two gentlemen sitting on the far left. Neither answered the question. It related to East and West. Most of the money, as the chairman says, is coming out of the West, and he asked if you think that should be continued, and neither of you answered it.

Mr. MCELWAINE. I believe it should, Senator.

Senator BUNNING. You believe the Western coalfields should pay the largest portion?

Mr. MCELWAINE. Sir, I believe that the legacy issues involved should be paid for by the industry, wherever it may be located.

Senator BUNNING. The legacy costs should be paid by the Western coalfields?

Mr. MCELWAINE. We still mine a fair amount of coal in my State, too, Senator.

Senator BUNNING. Well, we still mine about—we have 550 in Kentucky, still, sir, to be mined. So you think the West should pay more?

Mr. MCELWAINE. I didn't—Senator, with respect, I didn't say "pay more." I just said that the funding should come from industry, wherever it may be located, that the program—the cleanup of legacy sites should not be held hostage to wherever the industry——

Senator BUNNING. Well, don't you think there are more legacy sites East than West?

Mr. MCELWAINE. Yes, sir, because mining is historically in our part of the country. Yes, sir.

Senator BUNNING. Okay.

Both the UMWA folks, Ms. Lewis and Mr. Kane, I've have heard for several years that the CBF and the 1992 funds will go bankrupt very shortly, yet this has not happened. Why have the expected bankruptcies not occurred? What is the latest projection of funding shortfalls for these funds?

Mr. KANE. Would you like to take that?

Ms. LEWIS. Senator, the cash analysis for the Combined Benefit Fund, at this point, shows that it will be short in August 2007. That is a defined contribution plan, and the payments are made—essentially, premiums from the coal operators and, of course, the Medicare demonstration money that comes in from—revenue from Medicare and also the AML transfer, annual AML transfer. The 1992 plan is a defined-benefit plan. The statute requires that the benefits are guaranteed; and, therefore, the expenses and the needs to pay the health benefits are to be paid by the existing operators, and they are assessed both—either a per-beneficiary premium every year or a unfunded premium—pre-funding premium. And then they're also required to post a bond in the event that they go out of business.

So, that fund will always see the benefits paid, but the projections show that the amount of the annual premiums assessed on the operators is rising dramatically and will continue to rise because of the increase in the population.

Senator BUNNING. Mr. Kane, I want to go back to something that you said the Congress just assumed in the relationship with the

funding of 1992 and the CBF. Do you know that there was never a hearing held in the Ways and Means Committee in the Congress on that issue? I happened to be on the Ways and the Means Committee at the time, in the House.

Mr. KANE. I'm not aware of that fact, Senator.

Senator BUNNING. That bill came directly from the Senate to the floor of House of Representatives, and there was very little discussion on the floor. There was some, but very little. And the fact that the Ways and Means Committee members didn't have any input, but it was added on in the Senate and came to the House as a fact that the Finance Committee had done or that Senator Rockefeller had added on the floor of the Senate.

Mr. KANE. I certainly can't dispute that fact, Senator. The fact remains, though, that this entire program came about as a result of the Coal Commission, which was chaired by, then-Secretary of Labor Elizabeth Dole, and it was done with the—with input—there were representatives of government, labor, industry, the healthcare industry, academia. The entire issue was debated widely, on a national level. And this came about as a result or a recommendation from that commission and was acted on by Congress.

We believe that when Congress enacted that bill, that they intended it to be an ongoing program and for the Coal Act to be funded for as long as it needed.

Senator BUNNING. Well, there's some of us that will dispute that, but I'm not going to get into a hassle over it right now, for the simple reason that, as a member of the Ways and Means Committee at the time, it was never brought before our committee for a discussion.

I yield back.

Senator THOMAS. Thank you very much.

Senator Talent.

Senator TALENT. Thanks, Mr. Chairman.

I have had other hearings. I haven't been able to be here for a lot of this. I know this is a difficult issue, because it's just difficult. I mean, if Senator Craig were here, I would say we're trying to pour ten pounds of potatoes into a five-pound sack. Maybe, in his honor, I'll say it anyway.

We've been trying to take care of reclamation, return money to the States, and also take care of orphan miners, and there's just not enough money, the way I look at it. I do think that there may be a clue in how to square the circle if we remember that at the time these funds were established, I think they estimated $800 million in top priority reclamation projects, and we've now collected $8 billion in fees. So, maybe we can try and seek some kind of finality in that.

I have a letter, which I received from a broad coalition of coal workers and companies, and chief among which was the UMWA. And maybe all I'll do, Mr. Chairman, because I know a lot of the other issues have been covered, is to ask Mr. Kane, specifically, if he could ascribe the effort that led to this letter and the compromise proposal that's attached to it, and why you believe it's

something that we ought to consider. And then I'd ask if I could put the letter in the record, Mr. Chairman.*

Mr. KANE. Certainly, I'd be glad to. Thank you, Senator.

The coalition consists of a majority of stakeholders who are interested in both the long-term viability of the AML program and the coal industry Retiree Health Benefit Act. The UMWA is working closely with companies representing the interests of the BCOA, the reachbacks, the final-judgment companies, and others on this effort. In the House, Representatives Cubin of Wyoming, Peterson of Pennsylvania, and Rahall of West Virginia have taken a leadership role in this comprehensive reform proposal.

The compromise represents a major breakthrough in resolving both the reclamation and the orphan retiree healthcare issues after years of trying to resolve a variety of very complex issues.

Under the proposal, the concerns raised by other witnesses today are addressed. All States receive substantially higher amounts, going forward, to complete their reclamation needs. And all States, like Wyoming, Kentucky, and the Navajo Nation, receive their unappropriated State-share balances. At the same time, proposal provides the long-term solution for the healthcare needs of the orphan retirees and the UMWA healthcare funds.

We recommend that the committee consider the comprehensive proposal being considered in the House under the leadership of Representatives Cubin, Peterson, and Rahall as the comprehensive solution to the issues raised in the hearing today. It is the belief of the coalition that all of the issues discussed in the hearing today are interrelated and need to be addressed by Congress in a comprehensive solution. Absent a comprehensive solution, it is unlikely that any of the issues can be resolved.

Senator TALENT. I thank you, Mr. Kane. I think the proposal is certainly a good start. It's expensive. I don't know that we're going to be able to resolve this in any way without finding some more funds someplace. So, I think it's worth looking at, and I appreciate your explaining it.

Thank you, Mr. Chairman.

Senator THOMAS. Okay, thank you.

Well, thank you. Just one final comment. Mr. McElwaine, you talked about the East and the West coal. When the Eastern coal is worth about $50 and the Western coal is worth about $10, what would you think about changing the fee?

Mr. MCELWAINE. Senator Thomas, I want to make clear that the coalitions I work with have not drawn any lines in the sand.

Senator THOMAS. Okay. I'm just making a point.

Mr. MCELWAINE. Yeah.

Senator THOMAS. Senator Alexander regrets that he's unable to attend, but he has a statement for the record, and we will include it.

[The prepared statement of Senator Alexander follows:]

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

Abandoned mining lands can pose a serious health and environmental threat. These lands can contribute to contamination of our waters, make land unusable, and impact economic development in many rural communities.

* The letter can be found in the appendix.

In Tennessee, we have concerns with job loss in our rural communities. Cleaning up these abandoned mining lands not only corrects health and environmental hazards, but it also provides jobs in economically depressed areas. In Tennessee, it is estimated that it will cost $33 million to clean up the high priority sites and those sites that impact the general welfare of our rural communities. Tennessee has the most serious problem with priority 1 and 2 sites of the non-program states. Tennessee's problems are on par with those of Arkansas and Maryland which are minimum program states. Senator Thomas's proposal will permit Tennessee to receive baseline program funding and clean up our problems sooner.

There is another AML issue that is particularly important to many Tennesseans. The 1992 Coal Act required certain coal companies to pay health care benefits to retired union members. This Act impacted companies that did not promise these benefits. In 1998, the Supreme Court declared the law unconstitutional for the pre-1974 signatory companies, including Blue Diamond Coal Company (which is in Tennessee), and other companies in Pennsylvania, Indiana, Ohio, Virginia, and Texas.

These so-called "Super Reach Back" companies are the only ones not to be repaid what is justifiably owed to them. Companies who broke the law and did not pay were not penalized. Others who paid but did not litigate received a full refund. This issue has come up before the Congress on numerous occasions, and now is the time to correct this issue. The "Super Reach Backs" should be refunded their payments and interest like other coal companies.

I am hoping that this hearing will advise the Committee relative to the appropriate reclamation fee on coal and the appropriate period for the collection of the fee. I am also hopeful that we can get a better understanding of the level of effort needed to clean up our nation's abandoned mining lands. We really need to have a clearer understanding of the cost associated with our AML problems to determine the reclamation fee, how long the fee should be imposed, and the minimum program funding needed to address the high priority problems.

Senator THOMAS. I would like unanimous consent, also, to include in the record statements from Joanna Prukop, Secretary, Energy, Minerals, and Natural Resource Department of New Mexico.*

So, thank you very much for being here. There are some questions, Ms. Lewis, as to when this time expires and when we have to do something else to pay for the healthcare and those kinds of things.

Ms. LEWIS. Yes, sir.

Senator THOMAS. So, in any event, it's an issue. I think we're all committed to finding a solution, and we appreciate very much your being here and for assisting in finding that solution.

With that, the committee is adjourned.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

*The statement can be found in the appendix.

APPENDIXES

APPENDIX I

Responses to Additional Questions

NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS,
Frankfort, KY, October 5, 2005.

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

DEAR SENATOR DOMENICI: Thank you for providing the Interstate Mining Compact Commission and the National Association of Abandoned Mine Land Programs the opportunity to testify before your Committee on September 27. We appreciate the time before the Committee to comment on Senate bills 1701 and 961.

Please find below the responses to the follow-up questions from the committee. Thank you again for the opportunity to testify and to address these important questions. Please do not hesitate to contact me if you need further information.

Sincerely,

STEVE HOHMANN,
Director, State of Kentucky.

[Enclosure.]

Question 1. You state that "any adjustment to the current certification process should not inhibit the ability of 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. In the past, there have been suggestions to change the provisions of Section 409 of SMCRA by disallowing noncoal work in states that are not certified and that have high priority coal related work remaining. We do not believe any changes to Sections 409 are necessary. States and Tribes should have the option, as is allowed under current SMCRA guidelines, to reclaim those non-coal sites that pose an extreme hazard to either residents of the area, or visitors to the site. If new legislation eliminates this option, states and Tribes could be forced to reclaim lower priority coal sites while leaving high priority non-coal hazards in place. Most states do not have programs or funding in place for reclamation of non-coal hazards, so SMCRA funding is the only option available to provide protection to the public from these dangers. New legislation should continue to allow states, those closest to the problem, an appropriate level of flexibility to prioritize extreme hazards posed by non-coal sites.

The other concern is with regard to certification under Section 411. Some legislative approaches (including S. 961) would allow the Secretary (or others) to initiate the certification process on his/her own volition, rather than on application by the state or tribe. We believe that this could result in undue pressures on a state or tribe, thereby throwing its AML program into unnecessary and unproductive turmoil. Pursuant to the primacy principles of SMCRA, the states and tribes are in the best position to know whether certification is appropriate and in the best interests of the state or tribe. OSM appears to agree with us on this matter, as the agency stated its intent at the hearing not to pursue Secretarial certification.

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. We begin by noting that the alleged "disagreement" about the "scope and priority of abandoned mine problems" does not reside with OSM or the states. Rather, detractors of the AML program and opponents of reauthorization legislation have

used it as a smokescreen. They have little knowledge of how the inventory operates or how the states and tribes prioritize the limited funding they receive each year. The allegation also demonstrates complete unfamiliarity with or lack of comprehension about the nature of the AML inventory envisioned by Congress. The inventory has always been a planning tool that would by its nature evolve to reflect new problems and priorities. OSM's own guidance on how to define priority problems does not require or even anticipate similar results from state to state, given the fact that diversity is inherent in the concept of state primacy under SMCRA.

State, tribes, and OSM update the AML inventory (AMLIS) when new problems are reported and as reclamation abates an AML problem. Section 403 of SMCRA and OSM directives governing the AML inventory provide a framework for states and tribes to consistently prioritize AML problems. However, states and tribes exercise individual discretion in prioritizing AML problems and must have flexibility because of varying land uses and population densities occurring in different regions of the country. An AML problem categorized as priority I or II in the western U.S. may not necessarily receive the same priority in the east. We believe Congress intentionally allowed this flexibility pursuant to the primacy scheme set forth in SMCRA and subsequent amendments. It has also been reaffirmed by OSM in its policy directives, which provide for AML programs to be adaptable to different regions of the country, thereby extending program safeguards to as many citizens as possible.

Question 3. In Mr. Finkenbinder's testimony, he complained about how the "goal line" keeps moving with respect to the inventory of priority sites. Do you agree with the assertion that less serious sites are being added to the list as more problematic sites are addressed? What do you say in response to testimony we have before us today that one reason for the increase in priority sites is due to an increase in population density in and around old coal mining sites?

Answer. Mr. Finkenbinder, in delivering testimony for the National Mining Association (NMA), complained of many things, one of them being the moving "goal line", but he failed to comment on the legislation that was the subject of the hearing and offered no constructive proposal to deal with the failings he cited.

The "goal line" is a euphemism concocted and perpetuated by interests whose only "goal line" is to end the AML program. While we understand that the AML program was not intended to last forever, we do believe it was intended to remain in place as long as there are nationwide AML problem to address. (We agree with the statement made by Mr. Tom Shope of OSM in his testimony when he stated that, "The Administration believes the AML problem is a national problem that calls for a national solution.") Therefore, the "goal line" cannot be expressed in terms of an immutable number of AML problems in an inventory. The "goal line" must be expressed as a mission. The mission of the program is defined not by the inventory, but rather by the framework outlined by Congress in Title IV, its subsequent amendments, and OSM interpretations. The mission is to eliminate coal and noncoal AML problems (not AML mine sites) in a scheme that generally requires reclamation based on a priority system until we are no longer faced with a national problem requiring a national solution.

The NMA wishes to limit the scope, or goals, of the AML program by discarding OSM policies and Congressional intent embodied in amendments to Title IV since SMCRA was adopted in 1978. In doing so, NMA is dismissing the flexibility needed by individual states and tribes to work on AML problems that are most important to each of them. This enables NMA to misrepresent the goal of the AML program as a single purpose and then mistakenly claim that the goal has not been met.

There are several reasons why the AML inventory continues to grow. The most important are matters of funding reality. First, an AML site can produce many AML problems. Often, the state reclamation authority cannot reclaim the mine itself; it can only reclaim the AML problem the site caused. Because of this reality, the site can cause many problems that take years to manifest. For instance, a large AML contour mine can cause a landslide in the year 2005. The AML program will undertake a project to reclaim the landslide, but cannot possibly afford to reclaim the entire contour mine. So the mine remains in its unreclaimed state and can cause another landslide or other AML problems in the future. Hence, it becomes apparent that because the mission of the program is to focus on AML problems, and its financial limitations preclude enormous reclamation projects, the "goal line" mentality that defines the AML problem within a finite universe is unreasonable.

Second, the NMA states that less than 40% of the funds collected for the AML program have found their way to on-ground reclamation of high priority, coal-related problems. NMA's statement insinuates this is due to watered down priorities, abuse of priorities by the states, and excessive administrative costs. However, the real culprit accounting for the low percentage of funds for reclamation is the unap-

propriated balance. In fact, in 2001 OSM reported that only 54% of the fees collected have been allocated to the states over the life of the AML program. The balance, which now stands at $1.6 billion, is the single most important factor limiting the amount of money available for on-ground AML reclamation. Year after year of dwindling appropriations for AML programs have seriously compromised states' and tribes' ability to address the AML problems on the inventory. Inflated construction costs compound the problem by shrinking the buying power of the few AML dollars that reach the AML programs. Without a doubt, the "moving goal line" scenario would be minimized, if not eliminated, had state and tribal AML programs been given full funding, vis-a-vis collections, over the past 27 years. In this context, and using the "goal line" analogy here for the sake of argument, it is obvious that the goal line has not been moved. Rather, the state and tribal AML programs have been repeatedly penalized and set further back from the goal line.

Third, new AML problems emerge all the time. The states and tribes stand by our statement made in testimony that one reason for the increase in the number of priority AML problems (mistakenly interpreted as "moving the goal line") is the movement of populations into areas where abandoned mines exist that were formerly rural and consequently had little or no human intrusion. Once subdivisions and neighborhoods expand into these areas, AML sites that once posed no threat because of their remoteness now become dangerous to people who live near them. We have no quantitative statistics to depict the number of AML problems that have appeared because of population migration. However, this is a general trend our AML programs have observed in the past few years and it continues to occur.

We also take issue with another observation made in the NMA statement. NMA quotes a GAO report that states that, between 1985 and 1990, the states and tribes spent 28% of their AML grant funds on administrative costs to operate the AML program. NMA goes on to say that this percentage is probably low since AML programs bury administrative costs in their construction projects to avoid detection.

First, Title IV of SMCRA allows states and tribes to pay administrative costs from their AML grants. Most states would not have an AML program if not allowed to fund program administration from the AML grant.

Second, the percentage of administrative costs borne by the AML program is determined by the definition of administrative costs. For example, while NMA may believe that AML project inspection is an administrative cost, OSM has determined (as do many other federal agencies with similar construction-based programs) that project inspection is a legitimate construction cost. Certainly, if the AML agency were to contract the design and construction to an outside consultant, all design and inspection costs would be included in the construction account, not the administrative account. So the same should hold true when the agency decides to assume the duty of design and inspection. In fact, it is often the case that the agency can assume these duties for less expense than if done by a third party, thus saving overall AML funds regardless of whether it is an administrative or construction cost.

Third, in January 2001 the states and tribes of the NAAMLP conducted their own survey of the administrative costs associated with the AML program. We found that percentages varied widely from state to state (mainly because of how states define administrative costs) but the average was 14%. This percentage was determined based upon the definition of administrative costs found in the OSM Federal Assistance Manual in Chapter 5-10(A).

To further support our position on administrative costs, we point to the OSM 2004 Annual Report. In Table 3 on page 16 in the Abandoned Mine Land section of that report, OSM itemizes administrative costs for the grant year. Table 3 indicates that states and tribes spent $24,094,797 on administrative costs out of a total grant of $200,905,691. In other words, according to OSM states and tribes spent 12% of the grant on administrative costs. This correlates very closely with the percentage from the 2001 NAAMLP survey. We believe the percentages we have presented to the committee represent a more accurate picture of "how much we need to spend in order to spend" than the numbers quoted by NMA.

STATE OF WYOMING,
DEPARTMENT OF ENVIRONMENTAL QUALITY,
Cheyenne, WY, October 5, 2005.

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

DEAR SENATOR DOMENICI: Thank you for giving the State of Wyoming the opportunity to testify before your committee on Senate Bills 1701 and 961. Wyoming is

pleased to provide the following written response for the record to the questions enclosed with your letter of September 29, 2005.

Sincerely,

EVAN J. GREEN,
AML Administrator.

[Enclosure.]

Question 1. 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. The Office of Surface Mining (OSM), through the Casper Wyoming Field Office, reviews the State's Abandoned Mine Land Inventory System (AMLIS) entries for accuracy and appropriate priority designation.

Broad guidelines for the States and Tribes to use in prioritizing hazardous sites are contained in the Surface Mining Control and Reclamation Act (SMCRA). These guidelines are further defined by the criteria that OSM directs the States to use when entering hazardous sites into AMLIS. Wyoming believes that individual states should retain the flexibility to prioritize sites and budget sites for reclamation based on the state's assessment of the hazards to public health and safety. Abandoned mine sites may pose different problems in densely populated states like Pennsylvania or West Virginia than in a sparsely populated state. Wyoming relies on the integrity and experience of its mine reclamation professionals in the assessment of hazards to citizens and visitors

Wyoming has just completed a comprehensive statewide inventory process designed to gather technical and cost data relative to remaining coal and non-coal hazards. Wyoming has a high level of confidence in the accuracy of this process. Over 10,000 sites were identified from original sources and databases, including the Bureau of Mines, USGS, the Wyoming Geological Survey, local museums, and company records. These sites were then screened to eliminate duplicates and verify production records. About 1,200 sites were singled out for field verification. Based on site visits by qualified mining and reclamation engineers, cost data is now being developed for 393 priority 1 and priority 2 coal sites, and for 650 hazardous non-coal sites. These sites will be placed on the Abandoned Mine Land Inventory System (AMLIS) as funds are available to budget these sites for reclamation.

Question 2. In Mr. Finkenbinder's testimony, he complained about how the "goal line" keeps moving with respect to the inventory of priority sites. Do you agree with the assertion that less serious sites are being added to the list as more problematic sites are addressed? What do you say in response to testimony we have before us today that one reason for the increase in priority sites is due to an increase in population density in and around old coal mining sites?

Answer. Wyoming's inventory and budgeting process considers only Priority 1 and Priority 2 hazards. Priority 3 sites (primarily environmental issues) are reclaimed only in conjunction with P1 and P2 sites. For example, coal slack in a drainage would be reclaimed only if the material could be used economically as backfill to close a P1 or P2. Wyoming has a sufficient inventory of high priority sites and does not add less serious sites to our inventory. We do retain an internal inventory of "less serious" sites. Responsible AML program management would dictate that those responsible for protecting the public from AML hazards maintain an accurate inventory of sites that may become Priority 1 in the future due to opening of subsidence features, mine roof failures, or erosion into open workings. Note that these "less serious" sites are not entered into AMLIS.

The number and cost of remaining sites has been increasing for a number of reasons. Historical coal fields are notoriously unstable. As mine timbers decay and old closures deteriorate, new priority 1 sites open up exposing all the dangers associated with public access to underground workings. Costs of reclamation have increased dramatically over normal inflation due to rising costs of fuel and construction materials. The longer reclamation is delayed, the more it will cost.

Wyoming agrees that one reason for an increase in high priority sites is the encroachment of subdivisions into historical mine fields. Also, as more and more people utilize recreational opportunities in the West, visitation to remote but easily accessible sites on public land increases the possibility of a catastrophe. People in Western states have died driving into mine shafts or air vents, overturning vehicles in closed but unreclaimed subsidence features, riding off-road vehicles over highwalls, and exploring open mine shafts and adits. Individual states are in the best position to prioritize hazards to public health and safety within the guidelines provided by SMCRA.

UNITED MINE WORKERS OF AMERICA,
Fairfax, VA, October 14, 2005.

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

DEAR MR. CHAIRMAN: I want to thank you for the opportunity to testify at the September 27, 2005 hearing on reauthorization of AML program and reform of the Coal Act. We appreciate the committee's continued interest in the UMWA Funds and its programs to keep the promise of lifetime health care to retired coal miners.

Attached are answers to the questions you submitted for the record. Please let me know if I can be of further service as the committee finalizes its work to reauthorize the AM1 program.

Sincerely,

DANIEL J. KANE
International Secretary-Treasurer.

[Enclosure.]

UMWA RESPONSES TO QUESTIONS FROM CHAIRMAN DOMENICI

Question 1. In your testimony, you describe proposed legislation that you refer to as the "Cubin-Peterson-Rahall" compromise. This so-called "compromise" does seem to provide something for everyone, but it's unclear at this point exactly how much it would cost. Your testimony indicates that, in addition to lowering the AML fee and paying back the state share balances, the "compromise" would provide for the transfer of AML Fund interest and unappropriated funds to the "CBF, 1992 and 1993 Funds to pay health benefits for orphans and cover any deficits." In addition, you describe the use of additional revenues from mineral leasing and royalty revenue "as needed" to cover "health care costs of orphan retirees in the CBF, 1992 and 1993 Funds." Exactly what portion of the costs of these funds would the legislation cover? In particular, since the 1992 Fund is completely paid for by specified companies, and as such, will not run a "deficit," how would this legislation determine the level of payments to be made for that Fund? What is the total amount of government liability for these Funds under this proposal?

Answer. The Cubin-Peterson-Rahall compromise would provide support for unassigned CBF beneficiaries and would permit the use of AML interest to cure deficits in the CBF, much as Congress has done on three separate occasions with emergency appropriations of AML interest. It also would permit transfers to help pay for orphan beneficiaries in the 1992 and 1993 Plans. For the 1993 Plan, the compromise would limit transfers only to orphan retirees who were in the 1993 Plan as of December 31, 2005.

The compromise legislation would also substitute mineral leasing revenues for premiums currently paid by so-called "reachback" operators and would reimburse contributions made by the "final judgment" companies[1] to the CBF prior to the *Eastern Enterprises* Supreme Court decision.

The Coal Act provides that the trustees of the 1992 Plan should set the premium rates paid by coal operators at a level sufficient to cover the costs of running the plan. Consequently, the 1988 Agreement operators are billed whatever premium amounts are needed to pay the health costs of the plan and are required by law to pay such premiums. Therefore, your observation is correct that there is no projected deficit in the 1992 Plan. The problem is that the orphan population has grown significantly in recent years due to bankruptcies of several large companies, including Bethlehem Steel in 2003 and Horizon Natural Resources in 2004. These two companies alone added about 7,000 beneficiaries to the 1992 and 1993 Plans. As the population grows and medical costs escalate, an ever-increasing burden is placed on the companies contributing to the plan. For example, the pre-funding premium for the 1992 Plan has increased from $82 per beneficiary in 1993 to nearly $650 per beneficiary in 2006.[2] The pre-funding premium is projected to increase to $3,470 per beneficiary in 2017.

[1] "Final judgment" companies are companies that had received a final adverse judgment on their court challenge to the Coal Act prior to the Supreme Court ruling in Eastern Enterprises. These companies were relieved of prospective liabilities to the CBF as a result of the Eastern ruling, but did not receive reimbursement of previously paid premiums because their cases had gone to final judgment and the courts upheld the CBF's position regarding reimbursement.

[2] Rates for 2006 have not been finalized. The 1992 Plan is funded through "per beneficiary premiums" required to be paid by last signatory employers to whom retirees may be attributed and by "pre-funding premiums" paid by 1988 Agreement operators. Because most of the Plan's

Continued

In addition, if the reachback and final judgment companies are to receive relief under the compromise, it only seems fair to also provide some orphan retiree relief to the remaining companies that will continue to finance the UMWA Funds. Under current law, the final judgment companies have no ongoing liability and the reachback companies only pay for the costs of their retirees in the CBF. They have no Section 9711 retiree obligations, nor do they contribute to the 1992 or 1993 Plans. In contrast, the 1988 Agreement employers pay for their retirees in the CBF, over 40,000 beneficiaries in their Section 9711 plans under the Coal Act, as well as the orphan costs of about 18,000 beneficiaries in the 1992 and 1993 plans. Under the compromise, the remaining contributing operators will continue to pay for their own retirees, but will receive help with the orphan retirees from federal sources.

The total expenditures under the compromise bill for health care benefits are projected at $2.3 billion over ten years, about $1.4 billion more than under current law.[3] The projection for the CBF is $1.1 billion, $640 million for the 1992 Plan and $560 million for the 1993 Plan. We understand that the Congressional Budget Office (CBO) scored the bill in July 2005 as increasing spending for health benefits about $1.5 billion and increasing revenues about $0.7 billion, for a net increase of $0.8 billion. We also understand that the Senate Budget Committee and the House Resources Committee have asked CBO to provide an analysis on the compromise.

Question 2. We now have a long history of transfers of money from the federal government to keep the CBF solvent. I understand your desire to ensure the solvency of the 1992 and 1993 Funds as well. However, please summarize your case for why the American taxpayer should assume the liability for the 1992 and 1993 Funds. According to Ms. Lewis' testimony, the costs of the 1992 Fund are required to be covered by industry operators and will not run a deficit. Why should Congress assume responsibility for the 1993 Fund, which is entirely the product of a collective bargaining agreement between the UMWA and coal operators?

Answer. The underlying premise of the Coal Commission recommendations and the Coal Act was that each coal operator would pay for its own retirees and mechanisms would be put in place to prevent dumping of retiree health obligations onto other operators and the UMWA Funds. If that premise had in fact been fulfilled, there likely would not be a need to seek relief for the 1992 and 1993 Plans. However, the bankruptcy laws have been used by companies to shed their retiree obligations-both contractual and Coal Act—while the underlying assets of the companies remain in business, competing with the companies that shoulder the burden for their retirees. The steel plants and coal mines owned by LTV, Bethlehem Steel and Horizon Natural Resources continue to operate today, generating revenues for their owners that are enhanced because the bankruptcy laws allowed them to dump their retiree health liabilities onto the UMWA Funds. The remaining contributing employers—who continue to pay for their own retirees—have shouldered an additional orphan burden because the bankruptcy laws have been used as a laundromat by some employers to wash away their Coal Act and contractual retiree health care obligations. This is precisely the sort of retiree dumping that the Coal Act was intended to prevent. Because the law has failed to prevent the dumping of retirees onto the UMWA Funds, however, we are in danger of returning to the situation the Coal Act sought to address—a small number of employers burdened with the retiree costs of companies that have avoided their obligations, often companies that are in direct competition with the remaining contributing employers.

All three plans—the CBF, 1992 and 1993 Funds—are successors to the original UMWA Welfare Fund that was negotiated in the White House in 1946 between the UMWA and the Federal Government during a period of government seizure of the nation's bituminous coal mines. Since that time, every branch of the federal government has had a role in shaping the UMWA Funds. When the Coal Commission examined the coal industry retiree health problem in detail in 1990, it concluded that:

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population cannot be attributed to any employer that remains in business, most of the Plan's expenses are paid by the operators who pay pre-funding premiums. The pre-funding premium cost is therefore equivalent to the cost of orphan retirees and beneficiaries in the 1992 Plan, and this cost is paid by operators who did not employ the orphan miners. The amount of pre-funding premium paid by each 1988 Agreement operator is determined by the number of retiree the operator has in its single employer health plan mandated to be maintained by section 9711 of the Coal Act. (Hence the term "9711 plan.") In addition, operators who provide 9711 plans must post security with the 1992 Plan to pay for three years of benefits in case the 1992 Plan must assume the obligation to provide benefits.

[3] Under current law, the CBF is entitled to interest earned each year on the AML Fund up to the amount need to pay for unassigned beneficiary costs. OSM maintains there is a cap of $70 million on the annual transfers. The UMWA disagrees with OSM about the $70 million cap. Even conceding for argument's sake that OSM is correct, this would imply a transfer of $700 million over ten years.

> "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."

All of the retirees, regardless of the plan they receive their health benefits from, worked in the same mines, under the same contracts, facing the same dangerous conditions to produce energy for America. They all have legitimate expectations of health benefits for life. They all received the same promise. The only difference is the date of their retirement. Every retiree who is covered by the compromise was retired or working in the industry at the time the lifetime promise was made. We believe that orphan retirees, those whose companies have gone out of business, have the same legitimate expectations as those whose employers remain in business. The problem is how to fund those benefits. The situation that is developing now is the same issue that led to passage of the Coal Act; a dwindling number of employers bearing a heavy burden for retirees who did not work for them.

The financing mechanism contemplated by the Cubin-Peterson-Rahall compromise would first use interest money from the AML Fund, then revenues from on-shore mineral leasing, then would look to general revenues only if those sources of financing proved insufficient.

Question 3. What is the status of the 1993 Fund? We understand that it is the product of a collective bargaining agreement. When does that collective bargaining agreement expire, and what is the status of negotiations regarding a new agreement?

Answer. As of September 30, 2005 there were 7,117 total beneficiaries in the UMWA 1993 Benefit Plan, up from 3,887 at the same point in 2004. The 1993 Plan had net assets available for future benefits of $11.2 million as of August 31, 2005. The current projection is that the 1993 Plan, absent additional funding, will exhaust its cash sometime in the first half of 2006. The National Bituminous Coal Wage Agreement of 2002 (NBCWA) is scheduled to expire December 31, 2006. Negotiations for a successor agreement have not yet begun.

UMWA Responses to Questions From Senator Bingaman

Question 1. Please provide a state-by-state breakdown of the number of UMWA health plan beneficiaries.

Answer. A list of beneficiaries by state and health plan is attached.

Question 2. How many so-called "orphaned" or "unassigned" beneficiaries are in each Fund?

Answer. Attached is a population projection for the three plans that was prepared by the UMWA Funds based on actuarial projections by the Funds health actuary, King Associates. In 2005, the average population of the CBF was 38,518 beneficiaries, of which 16,721 were unassigned beneficiaries. For the 1992 Plan, the average population in 2005 was 11,392 beneficiaries, the great majority of whom are orphan beneficiaries. When companies go out of business, the 1992 Plan collects the bond or other security that is required by the Coal Act and any other money that may be due the Plan from the company or its estate. These monies are then used to pay for those beneficiaries for as long as the money lasts, at which time they would be considered orphans. For the 1993 Plan, all of the beneficiaries are considered orphans because, by definition, their employers are no longer in business. As of September 30, 2005, there were 7,117 total beneficiaries in the 1993 Plan.

UMWA Responses to Questions From Senator Salazar

Question 1. Which of these legislative proposals does the UMW prefer? Could you explain why you favor a certain proposal over others?

Answer. The UMWA is supporting the Cubin-Peterson-Rahall compromise legislation, which has not yet been introduced in the U.S. Senate. Of the two bills pending in the Senate (S. 961 by Senator Rockefeller and S. 1701 by Senator Thomas), we believe S. 961 is a better bill because it recognizes the need for assistance with orphans in the 1992 and 1993 plans. However, the Cubin-Peterson-Rahall compromise offers better financial mechanisms to ensure that the promise of lifetime health care to coal industry retirees is fulfilled. In addition, the compromise deals comprehensively with Coal Act issues raised by all interested parties, including the retirees, contributing employers, the "reachback" companies and the "final judgment" companies.

Question 2. It appears that you are working hard to reduce healthcare costs by using a number of measures—given the rising cost of healthcare, your efforts are noteworthy. Have you worked with other healthcare systems, like the Veterans Af-

fairs system, to develop policies? Are their certain cost-saving measures that you are precluded from implementing?

Answer. The UMWA Funds has been the site of a Medicare demonstration program since 1990, which has made the Funds a test bed for developing, evaluating and disseminating new programs for the care of chronically-ill, frail, elderly beneficiaries. The central thrust of the Funds managed care activities is to ensure that beneficiaries receive medically necessary care at the appropriate level in a manner that is consistent with standards of high quality and cost effectiveness.

According to the results of a 2004 study conducted by Mercer Human Resources Consulting, the beneficiary population served by the UMWA Funds has a 35% percent greater burden of illness compared to the general Medicare population. On a series of biannual surveys conducted by the UMWA Funds, over 50% percent of the responding beneficiaries reported their health as "fair" or "poor" as distinguished from the other available categories of "excellent," "very good," or "good." The Mercer study further reported that the cost of health care for the plans was significantly less—by seven percent—than the level to be expected for the burden of illness found in the population. We believe this result lower than expected costs in a population with greater than average health burdens—is a direct result of the UMWA Funds managed care programs.

These programs include contracts with hospitals and other providers to pay at Medicare levels for the plans' Medicare and non-Medicare eligible beneficiaries and the establishment of a network of durable medical equipment providers with bargained lower costs. Costs in the plans' prescription drug benefit programs are managed by use of co-pay incentives for use of mail-order drugs, requirements for use of generics when available in the absence of medical necessity for brand name drugs, and a preferred product program encouraging use of less expensive therapeutic equivalents in important drug classes. The plans also employ expert medical management teams to ensure the most effective courses of treatment, especially for beneficiaries with a high burden of chronic illness, and these services help to reduce hospital admissions and save costs over the long term. A full report on the UMWA Funds managed care programs was submitted for the hearing record as an attachment to the Funds testimony.

The UMWA believes these efforts have proven effective and we consistently encourage the trustees and staff of the UMWA Funds to develop innovative programs that will improve the quality and cost of care given to our retirees. We do not share the philosophy that seems prevalent in many corporate plans that the way to "control" costs is to "shift" them to the beneficiary. While these efforts may temporarily lower the cost to the corporate sponsor (at the expense of the beneficiary), they do nothing to tackle the underlying problem of escalating health costs.

UMWA HEALTH AND RETIREMENT FUNDS DISTRIBUTION OF BENEFICIARIES BY STATE AND PLAN

[Data Current as of 08/31/2005]

	CBF	1992 BP	1993 BP	Total
AK	12	2	3	17
AL	1,343	216	138	1,697
AR	163	7	1	171
AZ	89	13	0	102
CA	159	6	2	167
CO	382	130	12	524
CT	15	1	0	16
DC	11	0	0	11
DE	27	5	0	32
FL	777	130	39	946
GA	127	24	5	156
HI	0	1	0	1
IA	15	2	0	17
ID	12	0	0	12
IL	974	1,019	868	2,861
IN	530	387	528	1,445
KS	45	63	57	165
KY	4,661	1,282	636	6,579
IA	12	0	0	12
MA	9	1	0	10
MD	209	20	2	231
ME	1	1	0	2
MI	228	6	2	236
MN	10	1	2	13
MO	71	14	25	110
MS	15	1	1	17
MT	40	3	0	43
NC	394	82	35	511
ND	3	0	0	3
NE	6	0	0	6
NH	6	0	0	6
NJ	73	4	0	77
NM	75	19	2	96
NV	21	4	2	27
NY	124	2	2	128
OH	2,457	236	159	2,852
OK	138	15	6	159
OR	18	0	0	18
PA	7,119	3,089	1,185	11,393
PR	0	2	0	2
RI	2	0	0	2
SC	141	34	8	183
SD	1		2	3
TN	1,014	105	46	1,165
TX	88	24	4	116
UT	413	74	61	548
VA	3,326	540	365	4,231
VT	2	0	0	2
WA	100	2	2	104
WI	16	4	0	20
WV	11,423	3,722	2,889	18,034
WY	97	2	4	103
Other	3	1	0	4
Total	36,997	11,296	7,093	55,386

UMWA HEALTH & RETIREMENT FUNDS
KING ASSOCIATES ACTUARIAL PROJECTIONS THROUGH 2017

[Updated to Most Current Available Information—September 22, 2005]

Plan Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Combined Benefit Fund									
Ending Fund Balance (000's)	($10,822)	($29,419)	($24,735)	($28,202)	($64,016)	($64,399)	($135,744)	($196,370)	($253,614)
Annual Deficit (000's)	($18,597)	$4,684	($3,487)	($35,814)	($383)	($71,345)	($60,626)	($57,244)	
Average Beneficiary Population	52,034	47,298	42,856	38,518	34,714	31,186	27,933	24,953	22,233
Avg. Unassigned Beneficiary Pop.	15,614	16,597	17,302	16,721	15,533	14,370	13,244	12,165	11,138
1992 Benefit Plan									
Prefunding Premiums Collected (000's)	$21,195	$23,768	$20,819	$15,875	$26,059	$44,732	$59,190	$61,028	$62,869
Average Beneficiary Population	6,432	8,126	10,618	11,392	10,917	10,430	9,931	9,432	8,936
1993 Benefit Plan									
Ending Fund Balance (000's)	($261)	($309)	($192)	$1,292	($19,769)	($49,614)	($90,598)	($139,183)	($195,128)
Annual Deficit (000's)	($48)	$117	$1,484	($21,061)	($29,745)	($41,084)	($48,565)	($55,985)	
Average Beneficiary Population	2,948	3,357	3,902	5,530	7,535	8,248	8,780	9,142	9,374

Figures reflect the Funds' estimates of CMS prescription drug funding, including Medicare demonstration funding through September 30, 2007 and Retiree Drug Subsidy beginning January 1, 2006.

Figures also reflect a preliminary estimate of a Part A risk contract payment to CMS during fall 2006, based on the latest available data.

UMWA HEALTH & RETIREMENT FUNDS
KING ASSOCIATES ACTUARIAL PROJECTIONS THROUGH 2017

[Updated to Most Current Available Information—September 22, 2005]

Plan Year	2011	2012	2013	2014	2015	2016	2017
Combined Benefit Fund							
Ending Fund Balance (000's)	($307,041)	($354,218)	($399,897)	($443,876)	($486,037)	($526,143)	($564,107)
Annual Deficit (000's)	($53,427)	($47,177)	($45,679)	($43,979)	($42,161)	($40,106)	($37,964)
Average Beneficiary Population	19,759	17,518	15,500	13,636	11,972	10,545	9,289
Avg. Unassigned Beneficiary Pop. 10,186	9,252	8,400	7,579	6,824	6,164	5,568	
1992 Benefit Plan							
Prefunding Premiums Collected (000's)	$64,687	$66,239	$87,854	$69,292	$71,076	$73,295	$75,449
Average Beneficiary Population (000's)	8,444	7,938	7,417	8,901	6,436	6,029	5,637
1993 Benefit Plan							
Ending Fund Balance (000's)	($258,640)	($329,797)	($408,669)	($495,584)	($591,162)	($698,410)	($812,250)
Annual Deficit (000's)	($63,512)	($71,157)	($78,872)	($86,895)	($96,598)	($105,248)	($115,840)
Average Beneficiary Population	9,522	9,591	9,585	9,541	9,482	9,425	9,372

Figures reflect the Funds' estimates of CMS prescription drug funding, Including Medicare demonstration funding through September 30, 2007 and Retiree Drug Subsidy beginning January 1,2006.

Figures also reflect a preliminary estimate of a Part A risk contract payment to CMS during fall 2006, based on the latest available data

NATIONAL MINING ASSOCIATION,
Washington, DC, October 14, 2005.

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

DEAR CHAIRMAN DOMENICI: The National Mining Association (NMA) appreciates the opportunity to testify before the Senate Committee on Energy and Natural Resources on September 27, 2005, to give testimony regarding S. 1701 and S. 961.

The following are NMA's responses to questions in writing received by NMA on September 29, 2005, from Chairman Domenici and October 11, 2005, from Ranking Member Bingaman.

Sincerely yours,

DAVID O. FINKENBINDER,
Vice President, Government Affairs.

[Enclosure.]

RESPONSES OF DAVID FINKENBINDER TO QUESTIONS FROM SENATOR DOMENICI

Question 1. In your testimony, you complained about how the "goal line" keeps moving with respect to the inventory of priority sites. Do you have any data to support the assertion that less serious sites are being added to the list as more problematic sites are being addressed? What do you say in response to testimony we have before us today that one reason for the increase in priority sites is due to the increase in population density in and around old mining sites?

Answer. The point made in NMA's testimony is that the high priority inventory has continued to expand while there appears to be only relatively modest progress made in on-the-ground reclamation of that inventory. In our testimony we noted that when the National Academy of Sciences (NAS) reviewed the performance of the AML program half way through the original authorization period (1986), NAS reported that almost all states indicated they would complete reclamation of their priority 1 & 2 inventory by the time fee authorization expired in 1992. The efficacy of the AML inventory, in terms of its lack of consistent criteria and the application of the criteria, has been the subject of controversy over the years. In addition to the NAS study we cited in our testimony, GAO ("Surface Mining—Information on the Updated AML Inventory," 88-196BR) and OSM ("Assessment, Evaluation, and Analysis of the Fee Collection Provisions and the AML Program of SMCRA," August 1990) have also documented this concern. We have attached a table from the OSM report that shows the extraordinary increase in the inventory between 1983 and 1989 as well as the results of the inventory review mandated under the FY1989 Interior Appropriations Bill. You will also note the dramatic change in various states' share of the inventory as the inventory was expanded and revised in a relatively short period of six years. As the OSM report notes, some states were generous in adding sites and the attendant cost estimates due to the linkage between the inventory share and funding levels.

Our other point about the inventory and priorities was that several states expended considerable sums on Priority 3 sites while substantial amounts of unreclaimed Priority 1 and 2 sites remained in their states. The data contained on OSM's website indicates that Indiana and Illinois, for example, have actually expended more AML money on priority 3 sites than the Priority 1 & 2 sites in their states.

We have no reason to doubt that the increase in the Priority 1 & 2 inventory is in part a result of the increase in population density around certain AMLs. However, to our knowledge no one claims that population density is the sole or even perhaps the principal reason for change in the Priority 1 & 2 inventory.

Question 2. In his testimony, Mr. Kane describes a proposal he refers to as the "Cubin-Peterson-Rahall compromise." What is the position of the National Mining Association on this proposal?

Answer. The NMA has no position on the "Cubin-Peterson-Rahall compromise."

RESPONSES OF DAVID FINKENBINDER TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Does the NMA support the extension of the AML fee? If so at what rate?

Answer. The NMA has no position on the extension of the AML fee.

Question 2. Do you support the modification of the allocation of funds under the Surface Mining Control and Reclamation Act to ensure that funds are directed to the States with the highest needs?

Answer. The NMA has no position on the allocation AML funds.

Question 3. Do you support the payment of unappropriated AML state share balances to the states, even where states have certified completion of their AML coal work?

Answer. The NMA has no position on the payment of AML state share balances to the states, even where states have certified completion of their AML coal work.

Question 4. Do you support the use of Mineral Leasing Act receipts to defray expenses of the UMWA coal miner retiree health benefits funds?

Answer. The NMA has no position on the use of Mineral Leasing Act receipts to defray expenses of the UMWA coal miner retiree health benefits funds.

ASSESSMENT, EVALUATION, AND ANALYSIS OF THE FEE COLLECTION PROVISIONS AND THE ABANDONED MINE LAND RECLAMATION PROGRAM OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

DIVISION OF ABANDONED MINE LAND RECLAMATION OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

AUGUST 1990

AML INVENTORY OF PRIORITY ONE AND TWO PROBLEM AREAS IN PROGRAM STATES AS OF 05/1/90

State Name	Historical Coal Prod. Tonnage Base Upon EIS [1] (86/87/88/89 Allocations)	AML Inventory 1983 [1] (84/85/86 Allocations)	AML Inventory 1986 [1] (As of 12/04/86) (1987 Allocation)	AML Inventory 1987 [1] (As of 11/30/87) (1988 Allocation)	AML Inventory 1989 [1 2] (Existing)	AML Inventory 1989 (Scrub) [3]
ALABAMA	2.86%	2.11%	0.19%	0.59%	0.68%	1.25%
ALASKA	0.03%	0.00%	0.00%	0.01%	0.00%	0.01%
ARKANSAS	0.24%	0.17%	0.11%	0.37%	0.37%	0.44%
COLORADO	1.39%	0.02%	0.69%	0.37%	0.41%	0.75%
ILLINOIS	10.60%	4.01%	1.26%	0.81%	0.82%	1.54%
INDIANA	3.45%	1.36%	2.77%	1.17%	1.31%	2.85%
IOWA	0.84%	0.96%	0.57%	0.49%	0.51%	0.78%
KANSAS	0.68%	0.57%	2.85%	2.06%	2.07%	2.36%
KENTUCKY	10.39%	0.00%	24.35%	10.79%	9.27%	12.71%
LOUISIANA	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
MARYLAND	0.67%	0.15%	0.00%	0.53%	0.52%	0.24%
MISSOURI	0.82%	2.35%	5.70%	2.34%	2.37%	2.64%
MONTANA	0.68%	0.08%	0.49%	0.33%	0.30%	0.69%
NEW MEXICO	0.50%	0.17%	0.08%	0.09%	0.08%	0.18%
NORTH DAKOTA	0.43%	0.19%	0.19%	0.21%	0.20%	0.47%
OHIO	6.50%	12.16%	5.26%	3.57%	3.43%	6.33%
OKLAHOMA	0.49%	1.73%	2.24%	2.41%	2.44%	1.28%
PENNSYLVANIA	34.26%	64.09%	42.30%	28.17%	29.54%	37.99%
TEXAS	0.14%	0.00%	0.49%	0.18%	0.18%	0.32%
UTAH	0.81%	0.00%	0.08%	0.25%	0.25%	0.56%
VIRGINIA	3.19%	0.82%	5.16%	4.02%	3.74%	5.00%
WEST VIRGINIA	19.69%	6.71%	3.69%	40.60%	40.86%	20.36%
WYOMING	1.36%	2.21%	1.49%	0.56%	0.56%	1.08%
CROW TRIBE	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
HOPI TRIBE	0.00%	0.00%	0.03%	0.04%	0.04%	0.08%
NAVAJO TRIBE	0.00%	0.07%	0.00%	0.04%	0.05%	0.08%
PROGRAM STATES ONLY	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
TOTAL TONS × 1000	43,851,643	[4]	[4]	[4]	[4]	[4]
TOTAL DOLLARS	[4]	$651,473,289	$2,128,290,793	$5,787,716,527	$5,691,365,196	$2,885,957,935

[1] INVENTORY AND HISTORICAL COAL DATA EXTRACTED FROM ALLOCATION RECORDS
[2] CURRENT INVENTORY HAS RAMP ACCOMPLISHMENTS/PROJECT AREAS SEPARATED AND NOT INCLUDED
[3] DATA AS OF 07/13/90.
[4] NOT APPLICABLE.

ABANDONED MINE LAND PROGRAM

RECLAIMED PUBLIC HEALTH AND SAFETY COAL RELATED PROBLEMS BY STATE/INDIAN TRIBE

[Priority 1 & 2]

State/Indian Tribe	(000$)	% of Total
Alaska	10,526	0.6
Alabama	32,620	2.0
Arkansas	18,646	1.1
California	1,340	0.1
Cheyenne River	2,647	0.2
Colorado	9,600	0.6
Crow	3,093	0.2
Northern Cheyenne	339	0.0
Fort Berthold	52	0.0
Fort Peck	134	0.0
Georgia	3,651	0.2
Hopi	1,226	0.1
Iowa	25,087	1.5
Idaho	0	0.0
llinois	58,210	3.6
Indiana	43,944	2.7
Jicarilla Apache	21	0.0
Kansas	16,678	1.0
Kentucky	263,071	16.2
Maryland	18,618	1.1
Michigan	2,342	0.1
Missouri	42,163	2.6
Montana	17,897	1.1
Navajo	1,544	0.1
North Carolina	163	0.0
North Dakota	27,538	1.7
New Mexico	6,325	0.4
Ohio	85,603	5.3
Oklahoma	21,114	1.3
Oregon	36	0.0
Pennsylvania	345,564	21.3
Rocky Boys	52	0.0
Rhode Island	554	0.0
South Dakota	37	0.0
Southern Ute	90	0.0
Tennessee	15,305	0.9
Texas	6,788	0.4
Uintah And Ouray	102	0.0
Ute Mountain Ute	14	0.0
Utah	8,069	0.5
Virginia	73,465	4.5
Washington	1,945	0.1
Wind River	55	0.0
West Virginia	341,726	21.0
Wyoming	116,601	7.2
Total	1,624,597	

Source: Abandoned Mine Land Inventory. (Quarter ending SEPO4), Programs: Acid Mine Drainage Plan, Coal Interim Site Funding, Coal Insolvent Surety Site Funding, Clean Streams Initiative, Enhanced AML Rule Projects, FRP, State Emergency Program, Pre-SMCRA Coal State/Indian Tribe Grant Funding, State Set Aside & Watershed Cooperative Agreements

RESPONSE OF CHARLES GAUVIN TO QUESTION FROM SENATOR DOMENICI

Question 1. Mr. McElwaine's testimony supports providing incentives for mining companies to mine old abandoned mine sites, With the understanding that they will reclaim the site. What is Trout Unlimited's position on remining?

Answer. Trout Unlimited supports remining as long as it meets the minimum standards set forth in Mr. McElwaine's testimony as follows:

- Should only be subsidized with AML money if the primary purpose and goal is reclamation;
- Must demonstrate the reclamation required by SMCRA is feasible, and this must still be a condition of permitting of the activity;
- There will be no reduction of environmental standards for that operation;
- If a mining project that includes "remining" takes in additional acreage outside of the original AML site then AML funds should not be used to subsidize the mining outside of the AML area;
- Removal of the financial risk to companies of bond forfeiture by use of AML money for performance bonds reduces the incentive to reclaim the site;
- No waivers of reclamation fees; and
- Incentives and rebates will be given AFTER reclamation takes place, not prior to reclamation.

RESPONSES OF ANDREW MCELWAINE TO QUESTIONS FROM SENATOR DOMENICI

Question 1. Both S. 1701 and S. 961 propose to eliminate the "general welfare" language from the AML priority 2 definition. Would this change prevent the reclamation of acid mine drainage sites in Pennsylvania and elsewhere? What portion of the sites on the Pennsylvania priority list would be affected, if any?

Answer. The "general welfare" language has been a part of SMCRA since the law was first passed in 1977 and is included in the definitions of both Priority 1 and Priority 2 categories. In January 1995, OSM updated its Policy Directive on the Abandoned Mine Land Inventory System to provide specific guidance on the Priority 2 eligibility of problem areas based on "general welfare" criteria.

Although Pennsylvania has properly applied OSM guidelines with regard to inventory management, we have continued to use "health and safety" criteria in selecting Priority 1 and 2 projects for expenditures. An acid mine drainage project without a "health and safety" component would likely be classified as a Priority 3 problem and would qualify for funding using funds from the 10% setaside program or OSM's Appalachian Clean Streams Initiative (ACSI).

In summary, elimination of the "general welfare" language would reduce Pennsylvania's inventory, but it does not reduce the number of actual sites affected by AMD. This problem remains. Nor does it eliminate sites that have contaminated water in the middle of communities that do not have a physical component like a highwall or shaft. Pennsylvania coalfield communities have been identified as having certain health problems in higher quantities than other areas. Eliminating the general welfare language would narrow the eligibility of sites in Pennsylvania, and it could severely impair our ability to be as strategic and cost effective as possible in developing a response. It would be even more harmful to other historical production states that do not yet benefit from strong AML programs, as does Pennsylvania.

At this time we are not able to quantify the large number of sites that would be impacted by eliminating this language, but we will seek that information for the Committee.

Question 2. Mr. Finkenbinder's testimony states that the "inventory has transformed itself into a funding gimmick in order to establish the AML program as a "permanent fixture." Do you agree with this statement, and how do you reply to those who criticize decisions made by the State of Pennsylvania with respect to sites included in its inventory of priority 1 and 2 sites?

Answer. We absolutely do not agree with Mr. Finkenbinder's statement. Given the extent of abandoned mine lands in Pennsylvania relative to the rate at which resources have been applied to the problem, the AML Program could indeed be required for generations if we continue with business as usual. But that is precisely why Pennsylvania has called for a reauthorization plan that will deliver sufficient resources to address the highest priority problems and to ensure that the job is completed in as quickly as possible.

With regard to Mr. Finkenbinder's testimony, we are confident that Pennsylvania's additions to the inventory are in full compliance with "AML-1" of OSM's Directives System, which provides guidelines on maintenance of the Abandoned Mine Land Inventory System. Further, OSM has not notified Pennsylvania that it has any concerns about the way "AML-1" has been implemented.

We agree with the Kentucky Department for Natural Resources, the National Association of Abandoned Mine Land Programs, and the Interstate Mining Compact Commission testimony on September 27, 2005 that, "there is no evidence of abuse of inappropriate action by the states or tribes regarding our selection of worthy AML projects over the past 27 years of the program."

Pennsylvania has been working diligently to clean up these sites as soon as possible for the environmental and economic health of our coal communities. As I pointed out in my testimony the state taxpayers and private groups have made significant investments of their own dollars to help clean up AML sites. And, the Pennsylvania AML Campaign is supporting a 15 year reauthorization, because citizens and the Commonwealth want to get the job done as soon as possible. Any support for a reduced AML reclamation fee makes it harder for Pennsylvania to complete the job in the 15 year timeframe. Ironically, support for a reduction in the current AML reclamation fee is likely to make the AML program the "permanent fixture" that Mr. Finkenbinder opposes.

Finally, in Pennsylvania there are still 185,000 acres of abandoned mine lands, and over 3,000 miles of polluted streams. Nationally, 3.6 million persons live within one mile of dangerous priority 1 and 2 sites. In Pennsylvania, 1.6 million persons live within one mile of these sites. This is no "gimmick," but represents real and urgent problems. When these AML sites are fully reclaimed, then there will be no need for further funding. Until that time, we must ensure that there are sufficient funds to tackle the problems that residents in the coalfield communities must see, hear, and smell.

Question 3. You state in your testimony that you support programs that give incentives for mining companies to mine old abandoned mine sites, with the understanding that those sites will be reclaimed in the process. This is commonly called "remining," and you admit that it is controversial in some quarters. Others believe it is a win-win situation that provides a cost-effective means to get old mine sites reclaimed. What has your experience in Pennsylvania been with remining?

Answer. Overall, Pennsylvania's experience with remining has been quite positive. Going back to 1997 when the regulatory program started systematically monitoring remining activity, Pennsylvania's coal industry has been issued more than 460 permits for mining activities that include remining. These operations were projected to eliminate 130 miles of highwall, reclaim nearly 20,000 acres and improve more than 140 miles of stream at an estimated value of more than $110 million.

Remining is very similar to other kinds of mining, but has the added benefit of reclaiming abandoned mine lands that would otherwise remain dangerous and unusable, and have to be paid for with AML funds. Many coalfield communities want the assurance that remining operations are subject to the same environmental laws and regulations and are held to the same standards. They are concerned that some proposals would weaken these standards by offering lower bonds or bonds paid for by entities other than the company, removing financial incentives to mine carefully. Further, there is a concern that the standards may not protect coalfield communities from blasting damage, new discharges, dewatered streams, and polluted/lost private drinking water supplies. With 1.6 million Pennsylvanians living near these sites, AML reauthorization must maintain the same standards for remining as for mining.

Operators have conducted remining operations because it makes economic sense. With increased demand for coal, remining is expected to expand. Incentives would enable more remining operations to be implemented, and would help maintain the benefit of reclamation of abandoned mine lands at no cost to the AML program or the Commonwealth.

One current positive example of the importance of remining is provided by Mile Lake, an abandoned mine land site in Pennsylvania's anthracite region, in Northumberland County. Secretary of Interior Gale Norton had the opportunity frilly over this site in February 2004. This abandoned mine land site is particularly dangerous as it has been associated with four reported deaths. PA's DEP has recently issued a permit for this site to be remined. The remining will enable the hazardous water-filled pit and dangerous highwall to be eliminated, while saving the AML Fund at least $1.3 million—the estimated cost to reclaim these features through a stand alone AML reclamation project.

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, December 30, 2005.

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 September 27, 2005, hearing on "Abandoned Mine Reclamation."

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

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosures.]

RESPONSES OF THOMAS D. SHOPE TO QUESTIONS FROM SENATOR DOMENICI

Question 1. SMCRA directed the Secretary to conduct a study on how to best enable Indian tribes to assume primacy with respect to the regulation of surface mining on Indian lands. In the 28 years since the enactment of SMCRA, the Secretary and the Navajo Nation have worked together to prepare for the grant of primacy to the Navajo Nation, but, without legislation, the Secretary does not have authority to consider an application for primacy. The Navajo Nation has requested an amendment to SMCRA that would allow the Navajo Nation to apply for primacy. Does the department support such an amendment?

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 surface coal mining on Indian lands. In 1984, the Secretary completed and submitted the required report to Congress. The report contained draft legislation and recommendations on 12 issues related to Tribal primacy. The recommendations reflected the Secretary's views at that time as to how those issues should be resolved.

In 1987, Congress granted authority to the Navajo Nation and the Hopi and Crow tribes to obtain approval of AML reclamation plans. However, Congress did not authorize Tribal primacy for regulatory programs.

Subsequently, 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 legislative proposal. While that effort resulted in the development of several draft legislative proposals, the Tribes have not been able to achieve consensus. As a result, no proposal has been forwarded to Congress.

We would be pleased to assist Congress in developing legislation to address this issue.

Question 2. In 1992, Congress ordered you to transfer the interest from the AML fund to the UMW'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 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 to the CBF? Do you have the authority to independently evaluate the amount that the CBF estimates should be transferred?

Answer. The October 12, 2000, Memorandum of Understanding with the CBF, requires 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 list of the unassigned beneficiaries as of September 1St each year.

The CBF list is determined by first taking a list of unassigned beneficiaries as maintained by the Social Security Administration (SSA) and deleting beneficiaries based upon known deaths not recorded by the SSA. The list is then refined by making adjustments based upon court cases and companies that are no longer in business. An audit firm reviews these changes based on procedures agreed upon by OSM and the CBF. The audit firm provides OSM a report of its review findings, if any.

The CBF then multiples the number of unassigned beneficiaries by the estimated actuarial costs to arrive at its 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, not to exceed $70 million.

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.

The Memorandum of Understanding also provides that the Federal Government reserves the right to audit any and all 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.

Question 3. Does the Administration/OSM feel it is necessary for the Secretary to have the authority 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. We see no reason for the Secretary to have unilateral authority to certify a State or Indian Tribe. Current law and each of the proposed bills tie allocation of the historic coal production funds to the number of Priority 1 and Priority 2 (high priority) coal problems a State or Tribe has. Under current law, certification allows States and tribes more discretion in the use of State-share funds. As a result, there is an incentive for States and Tribes to certify. That does not change in any of the proposed legislation.

Certification has not been an issue to date.

Question 4. Is there a requirement and a mechanism for the return of the State Share balances to the states/tribes if the AML fee is not reauthorized?

Answer. Under current law, 50 percent of the funds collected in a State or Tribe must be allocated to that State or Indian Tribe for grants. These allocated funds are either distributed in grants through the appropriations process or are credited to a State or Tribes account to be distributed in grants in future years through the appropriations process. This remains true if the authority to collect the fee is not extended.

Question 5. 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. States, Tribes, and the OSM routinely update the Abandoned Mine Land Inventory System (AMLIS) when new problems are reported or when reclamation abates an existing AML problem. This is an ongoing process that happens throughout the year. Section 403 of SMCRA and OSM directives governing the AML inventory provide a framework for States and Tribes to consistently prioritize AML problems. However, States and Tribes exercise individual discretion in prioritizing AML problems and must have continuing flexibility in prioritization due to varying land use needs and population increases that are occurring in various parts of the country. We believe it was Congress' intent to permit this flexibility under the primacy scheme set forth in SMCRA and subsequent amendments. It has also been reaffirmed by OSM in its policy directives, which provide for AML programs to be adaptable to different regions of the country, thereby extending program safeguards to as many citizens as possible.

RESPONSES OF THOMAS D. SHOPE TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. I have attached a copy of draft legislation that I understand is being discussed by some members of the House (hereinafter referred to as the 9/8/05 Draft). Do you interpret S. 961, S. 1701, or the 9/8/05 Draft to affect the ability of a State or tribe to use AML funds for noncoal reclamation work?

Answer. Neither of the two bills nor the draft legislation would alter the non-coal reclamation provisions found in sections 409 and 411 of SMCRA. Under all three bills, paragraphs (b) and (c) of section 409 would continue to authorize non-certified states and Indian tribes to receive grants for non-coal reclamation from their state/tribal share allocation or their historical production allocation, provided the non-coal project meets the extreme danger priority in section 403(a)(1).

In addition, S. 961 and S. 1701 would continue to authorize certified states and tribes to receive grants from their state/tribal share allocation. Under section 411 of SMCRA, those grants may be used for non-coal reclamation. However, S. 1701 would add a new section 402(i) that would allow states to collect the reclamation fees and retain half of those fees. The bill provides that if a state elects to exercise this option, it would no longer be eligible to receive grants from its state share allocation. Moreover, the portion of the fees that a state collects and retains would have to be used for the purposes of section 403, which would appear to preclude their use for non-coal reclamation.

Under the 9/08/05 Draft, certified states and tribes would no longer receive grants from their state/tribal share, but they would receive equivalent payments, either

from Mineral Leasing Act revenues or directly from the Treasury, in place of those grants. States and tribes could use those payments for any purpose approved by the state legislature or the tribal council, with priority given to addressing the impacts of mineral development, including non-coal reclamation projects.

Finally, it appears that all three bills would extend minimum program grant guarantees to both certified and non-certified states and tribes, rather than limiting them to non-certified states and tribes with Priority 1 and 2 (high priority) coal problems, as the current law does. Thus, all three bills have the potential of expanding the pool of grant monies available for non-coal reclamation.

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.

Has a comprehensive inventory of abandoned hardrock mine sites been undertaken?

Answer. Under SMCRA, the OSM is only required to inventory Priority 1 and 2 problems related to past coal mining. States and Tribes can reclaim non-coal problems if they are deemed to present a greater threat to human health and safety than remaining coal related problems or if they have certified that they have addressed all coal related problems. While non-coal problems do not have to be entered into OSM's Abandoned Mine Land Inventory System (AMLIS) until a non-coal reclamation project is funded in a grant, some States and Tribes have entered unfunded non-coal problems into AMLIS. However, this is not a complete inventory.

The costs of non-coal Priority 1 and 2 problems reported in AMLIS are shown by State and Indian tribe in the table below as of September 30, 2005.

State/Tribe Name	Unfunded	Funded	Completed	Total
ALASKA	1,735,000	100,00	691,019	2,526,019
ALABAMA	0	0	94,942	94,942
ARKANSAS	270,000	0	0	270,000
COLORADO	47,971,578	1,522,303	35,497,741	84,985,622
CROW	0	0	1,169,047	1,169,047
ILLINOIS	65,000	0	1,507,432	1,572,432
KANSAS	660,000	0	250,081	910,081
LOUISIANA	6,870,638	0	0	6,870,638
MISSOURI	9,480,800	0	385,201	9,866,001
MONTANA	93,625,000	1,766,400	22,940,640	118,332,040
NAVAJO	10,221	46,945	23,901,488	23,958,654
NEW MEXICO	2,102,700	272,000	3,421,275	5,795,975
OHIO	1,323,200	0	182,048	1,505,248
TEXAS	19,984,045	506,739	21,283,444	41,774,228
UTAH	2,663,500	85,000	6,815,883	219,121,090
WYOMING	35,824,056	3,611,367	179,685,667	219,121,090
Report Total	222,585,738	7,910,754	297,825,908	528,316,400

Question 3. The Navajo Nation relies on AML funding to undertake important public facilities work pursuant to the Surface Mining Control and Reclamation Act. Do you read S. 961, S. 1701, or the 9/8/05 Draft as restricting the use of funds for this purpose?

Answer. Since the Navajo have certified that they have completed all known coal problems, they may spend their tribal share on public facilities projects. Neither S. 961, S. 1702, nor the 9/8/05 Draft, if enacted as currently drafted, would affect this.

Question 4. What is the Department's position on Tribes assuming primacy for the regulation of coal mining activities on their lands?

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 surface coal mining on Indian lands. In 1984, the Secretary completed and submitted the required report to Congress. The report contained draft legislation and recommendations on 12 issues related to Tribal primacy. The recommendations reflected the Secretary's views at that time as to how those issues should be resolved.

In 1987, Congress granted authority to the Navajo Nation and the Hopi and Crow tribes to obtain approval of AML reclamation plans. However, Congress did not authorize Tribal primacy for regulatory programs.

Subsequently, 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 legislative proposal. While that effort resulted in the development of several draft legislative proposals, the Tribes have not been able to achieve consensus. As a result, no proposal has been forwarded to Congress.

Question 4a. Would the Administration support legislation to do so?

We would be happy to review any legislation developed to address this issue.

Question 4b. Will you work with me to craft a provision to accomplish this result?

Yes. We would be pleased to assist you in the development of legislation to address this issue.

Question 5. Could you please provide an analysis of the differences in how S. 961, S. 1701, the 9/8/05 Draft, and current law address the issue of coal miner retiree health benefits?

What are the estimates of the funds that would be made available for this purpose on an annual basis under (1) S. 961; (2) S. 1701; (3) the 9/8/05 Draft; (4) current law (assuming extension of the current fee collection authority through 2020; and (5) current law (assuming the fee collection authority expires June 30, 2006)? Please provide a table showing projections for the periods covered by the authorization in each bill.

Answer. Current law requires the use of an amount equal to the interest earned from the AML fund to help pay for health benefit premiums for unassigned beneficiaries under the United Mine Workers of America's (UMWA's) Combined Benefit Fund (CBF). At the beginning of each fiscal year, OSM transfers an amount equal to the amount that the trustees of the CBF estimate they will spend on healthcare benefits for unassigned beneficiaries during that fiscal year. The amount of the transfer is capped at either the amount of interest earned or the CBF's actual expenditures to provide those benefits or $70 million, whichever is less.

S. 961 would eliminate the $70 million cap and greatly expand the scope of the transfers. Instead of being limited to health benefits for unassigned beneficiaries in the CBF, transfers under S. 961 would be used to cover total net deficits of the CBF as well as any difference between revenues and expenditures for two other UMWA retiree health benefit plans, the 1992 Benefit Plan, and the multiemployer plan of July 20, 1992, which is known as the 1993 Benefit Plan. In the event funds available for transfer are insufficient to cover the revenue shortfalls of all three plans, the bill specifies that funds must be directed first to the CBF, then to the 1992 Plan, and finally to the 1993 Plan. All prior interest credited to the AML fund but not previously transferred to the CBF, known as "stranded interest," would be available for transfer to the CBF, beginning with FY 2004, to reduce any deficit in the net assets of the CBF. The bill also specifies that the unappropriated balance of the Rural Abandoned Mine Program (RAMP) allocation would be available for those transfers, beginning with FY 2004. It should be noted, however, that Title I of P.L. 109-54, which contains the FY 2006 appropriations for the Department of the Interior, transferred those funds to the Federal operations allocation on October 1, 2005, to meet anticipated needs in that area. While P.L. 109-54 does not conflict with the language of S. 961, the amount of money to be transferred would be limited to new contributions to the RAMP allocation from October 1, 2005, forward. Those contributions are unlikely to be very significant because S. 961 also terminates contributions to the RAMP allocation from fees collected for coal produced after the date of enactment.

S. 1701 is very similar to the current law. There are only two changes. First, the bill appears to provide that, beginning with fiscal year 2007, the annual cap on transfers to the CBF will change from the amount of interest estimated to be earned from the AML fund during the current fiscal year to the amount of interest actually earned during the prior fiscal year. However, because the bill makes no changes to section 402(h)(2) of SMCRA, which continues to calculate transfer amounts in terms of estimated interest earnings during the current fiscal year, the meaning of the changes to section 402(h)(1) remains uncertain. Second, the bill makes all prior interest credited to the AML fund (stranded interest) available for transfer to the CBF, beginning with fiscal year 2006.

The 9/8/05 Draft resembles S. 961 in that it eliminates the $70 million cap and expands the allowable uses of the of the transfers from the AML fund by authorizing use of transferred funds to cover revenue shortfalls for any of the three UMWA retiree health benefit plans. It also would make stranded interest and the unappropriated balance of the RAMP allocation available for transfer (although, as previously noted, P.L. 109-54 has already transferred the RAMP balance to a different account). Most significantly, the 9/8/04 Draft provides that, once AML-related funding sources are exhausted, revenue shortfalls in the UMWA plans would be addressed as follows: first, through the transfer of undesignated Mineral Leasing Act revenues; second, through the transfer of up to $320,000,000 in excess receipts

under the Mineral Leasing Act; and third, by direct transfers from the General Fund of the Treasury, if necessary. Using the same funding sources, the bill also authorizes CBF premium refunds with interest for certain operators, up to an aggregate maximum of $36,000,000. The bill's provisions would take effect in fiscal year 2006.

ESTIMATED ANNUAL TRANSFERS TO UMWA CBF FROM AML FUND

[Thousands of dollars]

Fiscal Year	S. 961	S. 1701	9/8/05 Draft	Current Law (current rates extended through 2020)	Current Law (current rates expire 6/30/06)
2006	105,106	Not Avail. [1]	Not Avail.	70,000	70,000
2007	87,838	Not Avail.	Not Avail.	70,000	70,000
2008	95,703	Not Avail.	Not Avail.	70,000	70,000
2009	103,738	Not Avail.	Not Avail.	70,000	70,000
2010	110,717	Not Avail.	Not Avail.	70,000	70,000
2011	118,036	Not Avail.	Not Avail.	70,000	70,000
2012	126,061	Not Avail.	Not Avail.	70,000	70,000
2013	132,768	Not Avail.	Not Avail.	70,000	67,745
2014	139,177	Not Avail.	Not Avail.	70,000	64,768
2015	145,651	Not Avail.	Not Avail.	70,000	64,111
2016	131,348	Not Avail.	Not Avail.	70,000	61,182
2017	107,964	Not Avail.	Not Avail.	70,000	58,147
2018	137,036	Not Avail.	Not Avail.	70,000	55,081
2019	178,254	Not Avail.	Not Avail.	70,000	51,986
2020	186,952	Not Avail.	Not Avail.	70,000	48,864
Total	1,906,349	Not Avail.	Not Avail.	1,050,000	961,884

[1] Note: We have not provided estimates of the funds that would be made available for coal miner retiree health benefits either under S. 1701 or the 9/8/05 Draft because of the significant variables involved in those bills. Of particular concern in S. 1701 is the question of which States would choose to take over the collection of AML fees and which States would have OSM continue to handle fee collection. OSM cannot project the amount of funds that would be made available under this legislation without guidance on the appropriate assumptions to use. However, we would be pleased to provide tables if further parameters are given.

Question 6. 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	40,959,942
2000—P.L. 106-113 [1]	68,000,000
2001	102,943,411
2001—P.L. 106-291 [1]	78,901,537
2002	113,606,257
2002—P.L. 106-291 [2]	(23,253,457)
2003	56,079,283
2003—P.L. 108-7 [3]	33,779,000
2004	14,966,929
2005	66,533,254
Totals	745,401,565

[1] Supplemental transfer from reserve pool to address deficits in CBF. Monies came from the reserve pool of interest earned between 1993 and 1995.

[2] Rescissions and refunds made by the CBF to OSM as a result of over-estimates.

[3] Supplemental transfer from reserve pool to address deficits in CBF. Monies came from the reserve pool of interest earned between 1993 and 1995.

Question 7. What is the projected interest for the next 20 years generated by the AML fund under: (1) S. 961; (2) S. 1701; (3) the 9/8/05 Draft; (4) current law (assuming extension of the current provisions and fee collection authority through 2020); (5) current law (assuming fee collection authority expires on June 30, 2006)?

Answer. Estimates are shown in the table below.

ESTIMATED INTEREST EARNED

[Dollars in 1,000s]

Fiscal Year	S. 961	S. 1701	9/8/05 Draft	Current Law—Extended to 2020	Current Law—June 30, 2006
2006	87,838	Not Avail. [1]	86,739	87,838	87,838
2007	95,703	Not Avail. ...	93,852	97,023	92,098
2008	103,738	Not Avail. ...	96,716	105,908	90,673
2009	110,717	Not Avail. ...	95,235	114,085	87,586
2010	118,036	Not Avail. ...	93,906	123,045	84,175
2011	126,061	Not Avail. ...	94,015	133,187	80,537
2012	132,768	Not Avail. ...	93,296	142,322	76,331
2013	139,177	Not Avail. ...	92,372	151,578	72,336
2014	145,651	Not Avail. ...	91,488	161,314	68,224
2015	154,305	Not Avail. ...	92,696	173,650	66,133
2016	161,092	Not Avail. ...	91,266	184,560	61,894
2017	168,915	Not Avail. ...	89,633	196,065	57,504
2018	178,254	Not Avail. ...	88,760	208,230	52,997
2019	186,952	Not Avail. ...	87,951	221,138	48,371
2020	186,122	Not Avail. ...	87,181	234,846	44,891
Total	2,095,329	Not Avail. ...	1,375,106	2,334,789	1,071,588

[1] Note: We have not provided estimates of the interest that would be made available under S. 1701 because of the significant variables involved in that legislation. Of particular concern in S. 1701 is the question of which States would choose to take over the collection of AML fees and which States would have OSM continue to handle fee collection. OSM cannot project the amount of interest that would be made available under this legislation without guidance on the appropriate assumptions to use. OSM will be happy to provide tables if further parameters are given.

Interest computations are made quarterly, on the last day of the month following the quarter. This is because operators have 30 days to remit the fee collections to OSM. Thus, funds due on June 30, 2006, will be paid to OSM on July 31, 2006, and interest will be calculated at that point. This interest will be credited to FY 2006 as it was earned in that year. Even if the fee collection authority is extended, the next collection would be due on October 31, 2006, and interest will be calculated at that point. This interest would be considered interest collected in FY 2007, as it will have been earned at that point.

Question 8. What is your position on whether the Secretary should have authority unilaterally to certify completion of coal reclamation in a State? Has certification been a problem?

Answer. We see no reason for the Secretary to have unilateral authority to certify a State or Indian Tribe. We see no problems with certification under the current law, or any of the proposed bills under consideration. Current law and each of the proposed bills 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. That does not change in any of the proposed legislation.

Certification has not been an issue to date.

Question 9. Do you support elimination of the general welfare criterion 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?

Answer. We think the general welfare criterion is valid in determining whether a site should be eligible for reclamation. We do not think it should be eliminated entirely. However, we believe that it should be moved to a Priority 3 (environmental) classification. In this way, States could address such problems, if necessary,

but at a lower priority. However, we note that whenever the level of high priority problems remaining to be addressed is discussed, these types of sites are not included. In all our discussion of the magnitude of the problem remaining, we considered only Priority 1 and Priority 2 Health and Safety Problems. Such a change would have minimal effect on the program. We have no records indicating that any money from AML construction grants have been spent on such sites. According to the Abandoned Mine Land Inventory System, approximately $3.6 billion would be removed from the inventory.

Question 9a. How much less would be expended under the program if this criteria were eliminated?

Answer. We anticipate that there would be little change in the program expenditures as no money is now being spent on general welfare problems.

Question 9b. How would this affect environmental remediation under the program?

Answer. If the criterion were eliminated, the most likely result would be that the sites currently classified as Priority 2 would qualify as Priority 3, or environmental problems and most would remain eligible for reclamation.

Question 9c. How would this affect the remediation of water pollution under the program?

Answer. All of the problems classified as Priority 2 by using solely the general welfare criteria are related to water pollution or degradation. As mentioned above, if these sites were reclassified as Priority 3 sites, they would remain eligible for reclamation.

Question 10. What is your estimate of the cost of reclaiming priority 3 sites?

Answer. Under SMCRA, OSM is only required to systematically inventory Priority 1 and 2 (high priority) problems related to past coal mining. Priority 3 problems do not have to be entered into AMLIS until Priority 3 reclamation is funded. While States and Tribes do enter some unfunded Priority 3 problems, we do not possess a complete inventory. As of September 30, 2005, unfunded Priority 3 problems reflected in the AMLIS totaled $1.9 billion.

We note that an early study of abandoned mine lands disturbed by coal mining nationwide was prepared in 1979 by Wilton Johnson and George Miller of the U.S. Bureau of Mines. The study is entitled,"Abandoned Coal-Mined Lands: Nature, Extent, and Cost of Reclamation" It estimated the total cost to reclaim all known abandoned mine lands was $31.6 billion in 1978 dollars. By comparison, we now estimate that it would cost $3 billion to reclaim the remaining Priority 1 and Priority 2 lands.

Question 11. Please describe the Clean Streams Program. What impact, if any, would the provisions of S. 961, S. 1701, and the 9/8/05 Draft 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. The Program utilizes 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 agencies that are involved in cleaning up streams polluted by acid drainage. Watershed associations, community groups, and recreation associations work together using funding from government and private sources, including matching funds and in-kind services. This cooperative approach results in improved efficiency and better leverage in the use of public funds, and encourages local community involvement.

Funding for the Clean Streams Program currently comes from the Federal Operations allocation under section 402(g) (3) of SMCRA. None of the bills currently under consideration would change this Program.

Question 12. Has OSM explored opportunities to earn a higher rate of return on the AML Fund? Please describe the opportunities and constraints. Can you suggest any legislation that would be of assistance in increasing the rate of return on the Fund?

Answer. 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. 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 funds 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, declining to a low of under 1 percent

in September 2003. While they began to climb after that, the rate was still so low that we could not transfer sufficient funds to the CBF.

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 planned to spread purchases of these notes over the course of Fiscal Year 2004 in order to take advantage of anticipated interest rate increases. However, when the 10-year interest rate dropped 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 average interest rate of 4.17 percent. The current strategy is to hold all long-term notes until maturity, which will occur in 2013 and 2014. The remaining amount (approximately $750 million) is invested at the one-day Federal Funds rate, which is our minimum liquidity need. The interest rate on these Federal funds averaged 2.65 percent in FY 2005. This strategy provided over $75 million in interest earnings in FY 2005. If the short-term rate exceeds the coupon rate on the long term notes in the future, then OSM will have to analyze the costs and benefits associated with moving all investments into short-term instruments.

One possibility would be to authorize OSM to invest in Par Value Specials. That is, investments with a specific rate of return set by law. The coupon rate is stable, but not as high as it is on OSM's 10-year notes, but OSM would not have to worry about early redemption penalties, as these instruments are redeemable at par.

Question 12a. What has been the rate of return on the AML Fund for each of the last 10 years?

Answer.

Year	Rate of Return (percent)
1996	5.07
1997	5.03
1998	5.00
1999	4.48
2000	5.15
2001	4.82
2002	1.86
2003	1.23
2004	2.76
2005	3.61

Note: These rates are the OSM rate of return, which include both short term and long-term investments. For instance, in 2005, OSM had $1.3 billion invested in long-term securities at a rate of 4.17 percent and $.75 billion invested in Federal Funds at 2.65 percent, which gave us an average earning rate for the year of 3.61 percent.

Question 13. Please provide for the record your projections of annual payments to each State and tribe under: (1) S. 961; (2) S. 1701; (3) the 9/8/05 Draft; (4) current law (assuming extension of the current provisions and fee collection authority through 2020); and (5) current law (assuming authority to collect the fee expires on June 30, 2006). Please include all payments (including payments of unappropriated State Share balance and annual payments).

Please also provide for each bill an estimate of excess funding over reclamation need (as defined by the priorities set forth in SMCRA) and unfunded need by state.

Please provide a table setting forth for each bill the required annual payment of unappropriated balances by State and Tribe.

Answer. Tables with payment projections for (1), (3), (4), and (5) are attached.* We have not projected payments for S. 1701 because of the significant variables involved in that legislation. Of particular concern is the question of which States would choose to take over the collection of AML fees and which States would have OSM continue to handle fee collection. The resulting partial distributions of State share funds become quite complex. OSM cannot project distributions without guidance on the appropriate assumptions. However, we would be pleased to provide tables if further parameters are given.

Question 14. Please provide for the record your projections of annual AML fee collections under (1) S. 961; (2) S. 1701; (3) the 9/8/05 Draft; and (4) current law (assuming extension of current provisions and fee collection authority through 2020).

Answer. Projected Collections are shown below.

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* Retained in committee files.

[Dollars in thousands]

2006	303,778	296,941	243,391	303,778
2007	311,803	290,711	249,810	311,803
2008	317,659	296,092	254,495	317,659
2009	322,328	272,894	258,230	322,328
2010	322,971	273,452	258,745	322,971
2011	325,628	275,783	260,871	325,628
2012	328,298	278,062	263,006	328,298
2013	329,885	264,277	264,277	329,885
2014	331,874	265,868	268,867	331,874
2015	334,569	268,023	268,023	334,569
2016	337,091	270,041	253,279	337,091
2017	340,115	0	255,547	340,115
2018	344,416	0	258,772	344,416
2019	349,912	0	262,894	349,912
2020	0	0	267,053	355,457
Total	4,600,327	3,052,144	3,887,260	4,955,784

Question 15. 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. As a result, we must rely on anecdotal information. However, we are aware of at least 45 deaths and 19 injuries at abandoned mine sites in the anthracite region of Pennsylvania in the past 30 years alone. In addition, the State of Oklahoma has reported 11 deaths in the pastl0 years.

Question 16. 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. Certified States and Tribes should first use AML funds distributed to them to address any newly discovered coal reclamation problems within their boundaries. Beyond that, we believe that certified States and Tribes should be able to use distributions from the unappropriated balances of their State-share accounts for whatever purposes they deem appropriate.

Question 17. 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 AML funds transferred to the CBF?

Answer. The procedures governing the transfer of AML interest to the CBF are set forth in a Memorandum of Understanding that was signed on October 12, 2000. A copy of the Memorandum of Understanding follows this response.*

OSM does not receive reports on the use of AML funds transferred to CBF.

Question 18. What are the current balances of the so-called "stranded" AML Interest and the Rural Abandoned Mine Land Program (RAMP)?

Answer. As of September 30, 2005, the "stranded interest" balance was $105,105,947.72. This represents the amounts earned in excess of eligible CBF transfers in any given year. Public Law 109-54, the Interior Appropriations Act for FY 2006, provides that the balance of the RAMP funds (section 402(g)(2) of the Surface Mining Control and Reclamation Act of 1977) on September 30, 2005 are to reallocated to the allocation established in section 402(g)(3) of the Surface Mining Control and Reclamation Act of 1977 (the Federal operations allocation). As a result, the RAMP balance on October 1 2005 became zero. A total of $361,118,412.68 was transferred to the Federal Expense Pool which is section 402(g)(3).

Question 19. Please provide an analysis of the remining provisions included in S. 1701 and the 9/8/05 Draft. What is the appropriate level of incentive for industry to undertake such a project? Please explain.

Answer. Both bills would reinstate the remining incentives in section 510(e) of SMCRA that expired September 30, 2004. One of the expired remining incentives reduced the revegetation responsibility period from 5 years to 2 years in the East and Midwest and from 10 years to 5 years in the West. The other incentive granted operators an exemption from the permit block sanction in section 510(c) if the violations that would have otherwise resulted in application of that sanction were caused

*The memorandum has been retained in committee files.

by unanticipated events or conditions encountered during remining operations. (Section 510(c) prohibits issuance of a permit to any operator responsible for an unabated violation unless the violation is in the process of being corrected.) Under S. 1701, the reinstated incentives would expire September 30, 2015, while the 9/8/05 Draft provides that those incentives would expire September 30, 2020

Both bills also would add a new section 415 to SMCRA to allow the Secretary to adopt regulations authorizing remining incentives that would leverage the use of AML funds by facilitating remining operations that would achieve more reclamation of eligible abandoned mine lands than could be achieved without the incentives. The bills list two examples of acceptable incentives: a waiver of reclamation fees and the use of AML funds to underwrite performance bonds for the remining operation. Both bills also limit use of the first incentive (rebate or waiver of reclamation fees) to the removal or reprocessing of abandoned coal mine waste or to remining operations on lands that have Priority 1 or 2 (high priority) AML problems. In addition, the amount of the fee rebate or waiver may not exceed the estimated cost of reclaiming the land under the AML reclamation program.

Both bills also require that, in each instance in which an incentive is to be used, the Secretary of the Interior determine, with the concurrence of the State regulatory authority, that the eligible land would not likely be remined and reclaimed without the incentives. By referencing the State regulatory authority, rather than the more generally applicable "regulatory authority," the bills may foreclose the possibility of applying those incentives to remining operations on lands for which OSM is the regulatory authority. Furthermore, requiring individual concurrence by the Secretary in each instance in which an incentive is to be applied may conflict with one of the basic principles of SMCRA, which is that States should have the primary regulatory authority for surface coal mining and reclamation operations within their boundaries. Therefore, it would be more appropriate for the legislation to require that the determination be made by the agency in charge of administering the AML reclamation plan, with the concurrence of the regulatory authority.

The appropriate level of incentive necessary to persuade industry to undertake a remining operation would be highly case-specific, depending on the amount and type of coal that may be recovered, the extent of the reclamation required, the potential environmental and other problems that may be encountered, the price of coal, and the availability and cost of surety bonds or other types of bonds.

In a highly competitive coal market or for a site with marginal profitability, waiving or reducing the reclamation fee could make the difference between a profitable mine and a decision not to mine at all. When surety bonds are scarce, expensive, or both, as they have been in recent years, the use of AML funds to underwrite performance bonds could provide a powerful incentive to achieve reclamation of AML sites without the government having to expend any funds. Using state funds, the Commonwealth of Pennsylvania has already established a very successful revolving bond fund for remining operations.

RESPONSES OF THOMAS D. SHOPE TO QUESTIONS FROM SENATOR CANTWELL

Qustion 1. What is the level of fees that have been collected in relations to mining activities within the State of Washington since the authorization of the fee on coal production under SMCRA? Please provide a total amount and a listing of collections related to coal produced in the State of Washington by fiscal year.

Answer. Figures in the table below include fees and late payment interest and penalties collected. Figures are rounded to the nearest dollar.

Fiscal Year	State of Washington Fees
1978	$1,703,363
1979	1,720,936
1980	1,783,743
1981	1,621,216
1982	1,537,156
1983	1,398,349
1984	1,397,822
1985	1,492,521
1986	1,601,531
1987	1,550,133
1988	1,342,007
1989	1,714,634
1990	1,661,425

Fiscal Year	State of Washington Fees
1991	1,653,846
1992	1,868,522
1993	1,623,218
1994	1,685,667
1995	1,517,541
1996	1,617,617
1997	1,409,330
1998	1,747,629
1999	1,518,208
2000	1,337,407
2001	1,702,271
2002	1,529,929
2003	2,321,286
2004	2,123,418
2005	1,906,147
Washington Historical Total	46,086,872

Question 2. What has been the federal expenditure allocated towards addressing AML hazards in the State of Washington under the provisions of SMCRA? Please provide a breakdown by AML priority, total federal appropriations to AML projects, a breakdown of projects by fiscal year, a characterization of the AML hazard addressed, and disclose any emergency expenditure.

Answer. Federal expenditures on completed AML reclamation in the State of Washington total $4.8 million. Emergency reclamation accounted for 35 percent of these expenditures. The primary problems reclaimed were vertical openings, subsidence, and portals.

The Federal expenditures on completed AML reclamation in the State of Washington are shown in the table below.

County	Project Type	Amount
Cowlitz	Other	3,994
Garfield	Emergency	15,033
King	Other	1,796,891
	Emergency	1,543,036
		3,339,927
Kittitas	Other	367,288
Lewis	Other	71,744
	Emergency	10,225
		81,969
Pierce	Other	694,294
	Emergency	106,609
		800,903
Skagit	Other	27,638
Thurston	Other	48,018
Whatcom	Other	76,481
	Emergency	19,225
		95,706
Total	Other	3,086,348
	Emergency	1,694,128
		4,780,475

Question 3. How many priority 1 and 2 projects remain to be addressed within the State of Washington? What counties are those projects located in? As you respond, please identify the specific location of remaining Priority 1 and 2 sites, and if remaining Priority 1 and 2 sites are located within incorporated cities and identify the city if applicable.

Answer. Forty four Priority 1 and 2 Problem Areas remain to be addressed in the State of Washington. A Problem Area is a unique geographic area containing one or more abandoned mine land problems. These 44 problem areas are shown by county in the table below. The estimated cost of reclaiming these problem areas is also shown by county. This information is in OSM's Abandoned Mine Land Inventory.

This database does not indicate if a Problem Area is in an incorporated city, and we do not have that information.

County	Number of Problem Areas	Unfunded Costs
King	18	1,598,600
Kittitas	9	522,000
Lewis	2	24,000
Pierce	9	2,337,500
Skagit	1	10,000
Thurston	1	15,000
Whatcom	4	52,500
Washington	44	4,559,600

The county in which each of the 44 problem areas is located is shown in the table below along with the estimated cost of reclaiming the problem area and its longitude and latitude.

AMLIS—KEY	County	Unfunded Costs	Longitude	Latitude
WA000009FRA	King	850,000	-121.983333	47.341667
WA000011FRA	King	182,000	-122.145833	47.520833
WA000030FRA	King	10,000	-121.983333	47.316667
WA000056FRA	King	10,000	-121.887500	47.334722
WA000064FRA	King	50,000	-121.925000	47.268333
WA000066FRA	King	100,000	-121.958333	47.286667
WA000067FRA	King	6,000	-121.875000	47.250000
WA000072FRA	King	27,000	-122.000000	47.551944
WA000078FRA	King	5,000	-121.941667	47.525000
WA000079FRA	King	11,250	-121.918889	47.473611
WA000082FRA	King	20,000	-122.111111	47.451389
WA000086FRA	King	130,000	-121.918056	47.272222
WA000087FRA	King	57,500	-121.950000	47.325000
WA000088FRA	King	16,850	-121.906667	47.297778
WA000089FRA	King	6,000	-122.020833	47.275000
WA000122FRA	King	100,000	-122.039444	47.525000
WA000132FRA	King	12,000	-122.058333	47.516667
WA000154FRA	King	5,000	-122.206944	47.447778
WA000001FRA	Kittitas	5,000	-120.926111	47.200833
WA000005FRA	Kittitas	40,000	-121.125000	47.125000
WA000117FRA	Kittitas	5,000	-120.875000	47.125000
WA000221FRA	Kittitas	5,000	-121.125000	47.125000
WA000224FRA	Kittitas	182,000	-121.125000	47.250000
WA000225FRA	Kittitas	5,000	-121.125000	47.125000
WA000226FRA	Kittitas	5,000	-120.925000	47.173611
WA000229FRA	Kittitas	102,000	-121.125000	47.250000
WA000230FRA	Kittitas	173,000	-120.958333	47.233333
WA000031FRA	Lewis	8,000	-122.875000	46.625000
WA000039FRA	Lewis	16,000	-122.875000	46.625000
WA000010FRA	Pierce	202,500	-122.036667	47.101667
WA000040FRA	Pierce	345,000	-122.041667	47.069444
WA000071FRA	Pierce	50,000	-122.000000	47.000000
WA000100FRA	Pierce	210,000	-122.010000	47.023611
WA000101FRA	Pierce	35,000	-122.040278	47.041667
WA000102FRA	Pierce	150,000	-122.000000	47.000000
WA000103FRA	Pierce	1,240,000	-122.025000	47.086111
WA000104FRA	Pierce	55,000	-122.016667	47.122222
WA000111FRA	Pierce	50,000	-122.050000	47.055556
WA000076FRA	Skagit	10,000	-122.166667	48.418889
WA000043FRA	Thurston	15,000	-122.768333	46.816667
WA000069FRA	Whatcom	10,000	-121.920833	48.833333
WA000073FRA	Whatcom	18,500	-122.233333	48.791667
WA000146FRA	Whatcom	12,000	-122.495833	48.775000
WA000147FRA	Whatcom	12,000	-122.480556	48.745833
Total		14,559,600		

Question 4. What is the estimated total cost of addressing unfunded priority 1 and 2 sites within the State of Washington?

Answer. As of September 30, 2005, the total cost of addressing unfunded Priority 1 and 2 sites within the State of Washington is estimated to be $4.6 million.

Question 5. Is it still possible for the State of Washington to create an approved State Reclamation Program? If so, what factors does OSM consider when approving or disapproving a State reclamation program?

Answer. Yes, the State of Washington can still submit and receive approval of a State AML reclamation plan. The requirements and procedures for plan submission and approval are set forth in the regulations at 30 CFR Part 884. Specifically, as provided in 30 CFR 884.14, before approving a State AML reclamation plan, the Director of OSM must——

(1) Hold a public hearing on the plan within the State or find that the State provided adequate notice and opportunity for public comment;

(2) Solicit and consider the views of other Federal agencies;

(3) Determine that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan;

(4) Determine that the plan meets all the requirements of Subchapter R of 30 CFR Chapter VII;

(5) Determine that the State has an approved State regulatory program under section 503 of SMCRA; and

(6) Determine that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

One of the most time-consuming and resource-intensive of those requirements is likely to be submitting and obtaining approval of a State regulatory program for coal exploration and surface coal mining and reclamation operations on non-Federal, non-Indian lands within the State. The requirements for submitting a proposed State regulatory program are found in 30 CFR 731.14, while the criteria and procedures for review and approval of a proposed regulatory program are located in 30 CFR Part 732. Among other things, the State of Washington will need to adopt laws and regulations consistent with SMCRA and its implementing regulations; designate a State regulatory authority; and demonstrate that it has sufficient legal, technical, and administrative personnel and sufficient funding to implement the provisions of the regulatory program and other applicable State and Federal laws.

RESPONSES OF THOMAS D. SHOPE TO QUESTIONS FROM SENATOR SALAZAR

Question 1. Why would it be desirable for the Secretary of Interior to certify that a state has completed its coal-related abandoned mine reclamation activities, rather than a Governor, who is more familiar with a state's AML problems? (I am referring to language in the Cubin/Rahall/Peterson bill, which is not in the Thomas bill).

Answer. We see no reason for the Secretary to have unilateral authority to certify a State or Indian Tribe. Current law and each of the proposed bills 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. That does not change in any of the proposed legislations.

Question 2. Would such a provision authorize the Secretary to divert funds collected in one state to solve AML problems in another state?

Answer. No. All States and Indian tribes are entitled to receive in grants one half of the AML fee collected within their boundaries, irrespective of whether they are certified.

Certification means that a State or Indian Tribe can no longer receive supplemental grants based upon historic coal production, but can use their grants for purposes other than coal reclamation. However, since supplemental grants can be given only to States or Indian tribes if they have Priority 1 or Priority 2 coal problems in their inventory, these grants are curtailed without the need to force a State or Indian Tribe to certify.

Question 3. Is this a "state's rights" issue, inasmuch as the authority to initiate certification is currently vested in the Governor of the affected state?

Answer. We believe the decision to certify under any other the proposed legislation should remain with the States and Tribes.

[Responses to the following questions were not received at the time this hearing went to press:]

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, September 29, 2005.

Mr. JOE SHIRLEY, JR.,
President, The Navajo Nation,

DEAR PRESIDENT SHIRLEY: I would like to take this opportunity to thank you for appearing before the Senate Committee on Energy and Natural Resources on Tuesday, September 27, 2005, to give testimony regarding S. 1701, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to improve the reclamation of abandoned mines; and S. 961, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to reauthorize and reform the Abandoned Mine Reclamation Program, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Thursday, October 14, 2005.

Thank you in advance for your prompt consideration.

Sincerely,

PETE V. DOMENICI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR BINGAMAN

Question 1. What is the greatest need for AML funds on reservation lands?

Question 2. What is the extent of noncoal reclamation work to be done?

Question 3. What is the nature of the public facilities projects you are undertaking?

Question 4. Please describe some of the public health and safety issues you are confronting with respect to abandoned and unreclaimed mine sites.

Question 5. I understand that you support allowing Tribes to maintain approved regulatory programs under SMCRA. Who currently regulates coal mines on tribal lands?

Question 5a. Does the Navajo Nation administer all permits for mines (e.g., Clean Air Act, etc.) with the exception of those administered by OSM?

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, September 29, 2005.

Ms. LORRAINE LEWIS,
Executive Director, UMWA Health and Retirement Funds,

DEAR MS. LEWIS: I would like to take this opportunity to thank you for appearing before the Senate Committee on Energy and Natural Resources on Tuesday, September 27, 2005, to give testimony regarding S. 1701, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to improve the reclamation of abandoned mines; and S. 961, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to reauthorize and reform the Abandoned Mine Reclamation Program, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Thursday, October 14, 2005.

Thank you in advance for your prompt consideration.

Sincerely,

PETE V. DOMENICI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR DOMENICI

Question 1. What is the total amount of additional funding needed to keep the CBF, and 1993 Fund solvent for the next ten years?

Question 2. By law, the costs of the 1992 Fund is covered by certain coal-producing companies. However, how much is the cost of the 1992 Fund expected to increase over 2005 levels over the next ten years?

Question 3. S. 961 would dedicate all of the accumulated and future interest from the AML fund to offset costs of the CBF, and the 1992 and 1993 Funds. Even if the current balance in the fund is not reduced by increased reclamation funding

and/or repayment of state share balances, would enough interest be generated by the AML fund to keep these Funds solvent?

Question 4. If additional funds are not provided by Congress, when, if ever, will each of the three funds face a "cash negative" position and be forced to make benefit cuts?

Question 5. Please provide a list of the so-called "reachback" companies that are responsible for payment under the Coal Act. What is the collective responsibility of these companies per year?

Question 6. How many beneficiaries were added to the 1992 Fund by the Horizon bankruptcy? You stated in your oral testimony that you do not expect a great number of beneficiaries to be added to the 1992 Fund in the near future. However, do you have an estimate of the total possible population that would be eligible for coverage under the 1992 Fund should the company that is currently responsible for their benefits go bankrupt?

Question 7. What is the current per beneficiary premium paid by the companies that are signatories to the collective bargaining agreement that established the 1993 Fund? How much is contributed by each beneficiary per household? When does the collective bargaining agreement that established the 1993 Fund expire? Do the projections regarding the solvency of the 1993 Fund on the chart that accompanied your testimony assume the continuation of the terms of the existing collective bargaining agreement with respect to the 1993 Fund?

Questions From Senator Bingaman

Question 1. Please provide for the record a table displaying the projected deficits of the CBF over the next 12 years.

Question 1a. How would S. 1701 and S. 961 each affect these deficits? Please provide a table displaying annual projections.

Question 1b. How will these deficits affect the health care benefits of retired coal miners and their dependents?

Question 1c. How many people will be affected?

Question 2. Please provide for the record a table displaying annual deficits in the CBF since 1990, the amounts transferred from the AML Fund, and amounts appropriated to address the deficits.

Question 3. What is the procedure for the transfer of AML interest to the CBF and for reconciling the estimated expenditures from the CBF with the actual expenditures?

Question 3a. Is the CBF the subject of any internal or external audits? If so, how frequently are these undertaken and by whom?

Question 3b. What role, if any, does OSM have with respect to procedures and oversight of the CBF? What reports are provided to OSM?

Question 3c. You mentioned that GAO has reviewed matters relating to the CBF. What reviews of the CBF have been undertaken by GAO? What has been the outcome of these reviews?

Question 4. I understand that there has been a prescription drug demonstration program that the Funds have participated in that has been continued through September of 2007. Could you please describe this program and provide the annual revenue impact of having this program in place?

Question 5. What is the potential revenue impact of the so-called "premium litigation" that is currently pending? Please describe the key issues in that litigation.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF JOANNA PRUKOP, SECRETARY, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, STATE OF NEW MEXICO

Thank you for the opportunity to present a statement on this important topic.

We appreciate the efforts of this Committee and the bill sponsors to propose legislation that will extend the abandoned mine land reclamation fee under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and therefore continue this valuable and needed program.

New Mexico's Abandoned Mine Concerns. New Mexico has a long and distinguished mining history. Native Americans mined coal, turquoise, lead, 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. The nineteenth and twentieth centuries witnessed a number of mining booms across the State driven by the search for coal, gold, silver, copper and uranium among others. Today, New Mexico is home to some of the largest active coal and hard rock mining facilities in the United States.

Centuries of mining have also left another legacy: thousands of mine openings and other mine hazards that pose serious threats 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. In addition, abandoned mines across New Mexico pose significant threats to property and the environment through pollution, subsidence and underground fires.

Benefits of New Mexico's AML Program. The Abandoned Mine Land Program 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 is now near $1,600,000. 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 2000 mine openings have been closed and hundreds of acres of coal mine waste have been reclaimed 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 awarded by competitive bids to 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 AML Project, completed in 2003 with the closure of 90 mine openings, allowed the expansion of a newly created historic park that focuses on mining history. The Sugarite Coal Mine Project near Raton involved the reclamation of coal mine openings and waste piles located within a popular state park. And the recently completed Lake Valley AML Project will allow the BLM to expand hiking trails into a historic mining area.

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 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. An example of development encroaching on mining areas occurred last year when someone broke into a closed mine near Santa Fe and fell down a shaft and had to be

rescued. When this abandoned mine was closed 15 years ago, there were not even 4-wheel drive roads nearby; today, the site is adjacent to a subdivision.

New Mexico's Position. New Mexico strongly urges Congress to reauthorize the AML fee in SMCRA. New Mexico has joined with other states in supporting the efforts of the National Governors' Association, the Western Governors' Association, the National Association of Abandoned Mine Land Programs and the Interstate Mining Compact Commission to push for AML fee reauthorization.

Governor Richardson strongly supports the specific proposals set forth in the attached Western Governors' Association Resolution 05-26 adopted by the WGA in June. In addition, the New Mexico House of Representatives unanimously adopted the attached House Memorial 14 earlier this year. Both the WGA Resolution and the House Memorial urge that the AML fee be extended and that the state share balances be returned to the States. As a western state with a small AML program, we wish to highlight the following issues that are of great importance to New Mexico and are shared by other Western states with smaller programs such as Utah, Colorado and Montana.

- The minimum annual funding for states should be increased and guaranteed at a level of at least $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.
- 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.

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 seek to balance the need to complete the coal mine AML projects with the 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.

We appreciate the opportunity to present this statement, and look forward to working with the Committee in the future.

AML/COAL ACT COALITION.

Senator JIM TALENT,
Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR TALENT: We represent interested stakeholders who have been working for many months to develop a compromise proposal to address the long-term viability of the Abandoned Mine Land reclamation program and the Coal Industry Retiree Health Benefit Act. We are pleased to learn that the Senate Energy Committee will be holding a hearing on September 27th relating to AML reform, and appreciate your interest in this issue.

We are also grateful for the leadership shown by Representatives Cubin, Rahall, and Peterson to develop a comprehensive reform proposal dealing with AML/Coal Act issues. The undersigned organizations support this important compromise, which represents a breakthrough after many months of trying to resolve a variety of complex issues. We believe the attached legislative proposal gives us the best opportunity to achieve meaningful AML/Coal Act reform.

We respectfully request that you include this letter and the accompanying language* as part of the hearing record on September 27th.

Berwind Corporation

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*Retained in committee files.

Bituminous Coal Operators Association of America
Blue Diamond Coal Company of Tennessee, Virginia and Kentucky
The Brink's Company
Consol Energy
Davon, Inc. of Ohio
Drummond
Foundation Coal Corporation
Harbaugh Diesel Engine Co. of Pennsylvania
Lindsey Coal Mining Co. of Pennsylvania
Lone Star Steel Co. of Texas
The North American Coal Corporation
Orlando Utility Commission, Florida
Peabody Energy
Pennsylvania Electric Co. of Pennsylvania
Princeton Mining Co. of Indiana
Sherwood-Templeton Coal Co. of Indiana
Templeton Coal Co. of Indiana and Iowa
United Mine Workers of America
United States Steel Corporation
Virginia Lee. Co. of Virginia

Statement of The Citizens Coal Council

The Citizens Coal Council (CCC) welcomes this opportunity to submit comments concerning the state of coalfield citizens and the abandoned lands and waters in the communities in which they live. The following comments are related to the proposed bills for Abandoned Mine Land (AML) reauthorization reform for the AML Reclamation Program. The Citizens Coal Council represents a clear voice for citizens who are directly impacted by surface and underground coal mining activities. We recognize the need to reclaim AML sites in the coalfields of our nation. Member groups of the Citizens Coal Council have been active in seeking workable plans and achievable objectives relating to SMCRA and AML reclamation. Current draft legislation and suggestions contain important pieces to achieve AML reclamation, but still leave an unclear program to plan, implement, maintain, and manage an integrated AML program. The Office of Surface Mining Reclamation needs to focus on an emphasis on reclamation quality, safety, efficiency, and strategies relative to the complex environmental issues surrounding any proposal. We urge the Senate Energy Committee and members of Congress to try to understand what it is like to live in the coalfields where children draw pictures of the streams colored red, not blue "because that is what the creek behind my house looks like." We urge the Senate Energy Committee and members of Congress not to assume that issuing funds to be used to achieve more reclamation by so-called "remining" of these lands will be the solution. Remining has caused major problems in parts of Appalachia and is not a universal panacea. We need to create incentives for alternative reclamation programs in the coalfields of our nation.

The challenges of such a complex enterprise must embrace the diversity of all stakeholders, but it must cease to expect the coalfields of Appalachia to serve as national sacrifice zones. It must focus on workable reclamation programs and systems that achieve improvements to the communities already impacted from AML sites. The unanswered concerns that the concurrence of the regulatory authority (either federal of state) that the AML site is otherwise not likely to be reclaimed raises a "red flag" as to who is making such decisions. The wisdom of past congressional actions makes it clear that AML reclamation must be to maintain and preserve all efforts to reclaim AML sites for the protection of coalfield citizens. AML reform must not become a mechanism to funnel subsidies of federal funds into the coal industry. Real AML reform will take a serious commitment by Congress to address the goals, objectives and policies of the AML program. Before approving any new AML reform actions, Congress should require more detailed evidence of these proposed reform actions. Does the wheel need to be fixed, or does Congress need better management of current AML Reclamation Program's goals, objectives and policies?

SUMMARY OF PROPOSED ABANDONED MINE LAND PROGRAM REAUTHORIZATION AND REFORM LEGISLATION

Background

In 1977, Congress passed the Surface Mining Control and Reclamation Act (SMCRA). Among other provisions this law created the Abandoned Mine Land (AML) fund to pay for reclamation and restoration of land and water resources ad-

versely impacted by pre-1977 coal mining. Coal operators pay a fee (15¢ per ton of deep mine coal and 35¢ per ton of surface mine coal) into the AML fund. The 1977 law set up a formula for distribution of this funding and established criteria and priorities for what sites could be cleaned up.

Generally, sites eligible for AML funding are lands and waters, which were affected by coal mining or processing and abandoned before the enactment of SMCRA. These sites are categorized by 5 priorities. These are: (1) immediate threats to public health, safety, and general welfare, (2) threats to public health, safety, and general welfare (3) threats to land and water resources and the environment (4) public facilities adversely affected by past mining practices, and (5) public lands adversely affected by coal mining.

The funds collected from coal operators are supposed to be distributed to states to fund clean up of abandoned mine sites. Most of the money goes to states, which have "approved AML programs." In order to have an "approved program," a state or tribe must have regulatory primacy for coal mining. Under current law, states with approved programs or "program states" are to receive fifty percent of the funds collected in that state. The other fifty percent becomes part of the federal share. Forty percent of the federal share is supposed to be distributed to states based on how much coal was mined in those states before 1977 (historic production.) Twenty percent of the federal share is to be transferred to the Department of Agriculture for the Rural Abandoned Mine Program (RAMP). Program states are supposed to receive minimum funding of $2 million. Program states that do not receive $2 million based on current or historic production (minimum program states) are to receive money from the federal share to bring them up to $2 million. The rest of the federal share is to be used to pay for the administration of the federal Abandoned Mine Land program and to pay for emergencies in non-program states (states without regulatory primacy for coal.)

Title IV of SMCRA has been amended multiple times to reauthorize and change the AML program. Currently, the law allows for a transfer of interest from the AML fund to the Combined Benefits Fund (CBF) of the United Mine Workers of America (UMWA). Other provisions have also been added, such as giving States the option of setting aside ten percent of their funding for acid mine drainage abatement.

Nationally, less than twenty percent of AML sites have been reclaimed. The AML program should be reauthorized, so that States can continue to address the impact pre-1977 mining had on coalfield communities. Reauthorization provides the opportunity to improve the program in addition to extending it.

The Citizens Coal Council (CCC) a coalition of many citizens' organizations has worked to draft language for AML reauthorization. Members of CCC have worked to include language, which would benefit all citizens in coalfield communities. The CCC draft represents months of effort by coalfield residents to come up with a proposal, which will continue the AML program while improving it so that more funding goes to the areas where it is needed.

THE CITIZENS COAL COUNCIL PROPOSAL

Extends the collection of the AML fee and the AML program to 2029

At current funding levels the present sunset date would leave the nation with more than 85% of the inventoried abandoned mine land problems unreclaimed.

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. .

Increases 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. It happens that many areas which mined much of the coal before 1977 currently have low coal production.

By increasing the amount of the federal share of AML money, which is distributed based on historic production from 40% to 60%, this bill will facilitate clean up in areas with backlogs of AML problems.

In order to increase the percent, which is distributed based on historic production the bill, shifts RAMP (Rural Abandoned Mine Land Program) funding to the General Fund. RAMP has not been funded through AML for many fiscal years. This will allow RAMP, an Agriculture Department program, to receive appropriations under the Agriculture Appropriations bill.

Increases the 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 1990, this minimum program funding has been set at $2 million. However, most years minimum program states have received significantly less. These states have demonstrated a desire to operate meaningful clean-up programs but struggle to do so with current funding. This increase would both help to make up for past under-funding and insure that states with significant AML problems but low production would be able to continue running effective programs.

There are 26 states and tribes with approved Abandoned Mine Land (AML) Reclamation Programs. Presently ten states are Minimum Program States (Alaska, Arkansas, Iowa, Kansas, Maryland, Missouri, New Mexico, North Dakota, Oklahoma and Utah.) Over the years, coal production in these states declined to the point that there was not sufficient AML funding to administer an effective AML program. (The AML program is funded by a fee paid by coal operators on each ton of coal mined. Fifty percent of the money collected in each state is distributed back to that state for AML clean-up work.) Congress established the "minimum program" in FY 1988 requiring that each State with an approved AML program receive no less the $1.5 million.

With $500 to $600 million of high priority AML problems resulting in deaths each year, Minimum Program States, with broad support, convinced Congress that the annual minimum program funding should be at least $2 million. As a result, Congress passed the Abandoned Mine Reclamation Act of 1990, adding 402(g) 8, which set an annual minimum funding level of not less than $2 million for all approved programs. For the next three fiscal years, Minimum Program states received the annual $2 million. However, since FY 1995 Minimum Program states have only received $1.5 million.

At least 25% of the high priority AML sites are in Minimum Program States, but these states receive less than 10% of total AML funding each year.

An annual appropriation of $1.5 million to Minimum Program States is simply inadequate to reclaim the number of high priority AML sites in each State. Why? Because at this level AML staffs are reduced to a "bare bones" staff, reclamation contracts must be phased, and less reclamation is completed.

For Minimum Program States to once again operate an effective, viable, and efficient AML reclamation program, minimum program funding should be set at an annual level of $4 million.

Includes 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. This bill would grant federally managed (non-primacy state) programs $4 million minimum program funding if they demonstrate the ability to operate an effective abandoned mine reclamation program.

Tennessee is a non-primacy state, with hundreds of AML sites that need to be cleaned up. Giving Tennessee the same guarantee of minimum program funding as program states (and increasing minimum funding to $4 million), would make it possible to address the abandoned mine land problem in Tennessee in one decade instead of four.

Other aspects of the existing SMCRA title IV program would remain unchanged. These include:

- Keeping all 5 Priorities of AML sites as outlined in current law. This will allow States to continue to treat water quality as high priority and continue to address environmental problems
- Allocating 50% of reclamation fees collected from a State or Indian tribe to that State or Indian tribe subject to appropriations.
- Maintaining the 10% set-aside of annual grants for acid mine drainage projects.
- Allow for a transfer of interest from AML fund the to UMWA CBF, while affirming that supporting the CBF is not the primary purpose of interest from the AML fund. Restoration of coalfield environments is.

Since 1992 interest from the AML fund has been transferred to the UMWA Combined Benefits Fund (CBF). This bill would simplify the language to permit an annual transfer of interest to the CBF. It also adds language, which clarifies that in-

terest payment transfer to the Combined Benefits Fund is only one of the several priorities the Secretary must fulfill. Transfer of funds to the CBF was not the original intent of the organic Act and this amendment reaffirms that accrued interest funds shall be used to meet other priorities as well.

Keep the general welfare clause. This will allow state agencies to treat sites that have a negative impact on communities but are not a threat to safety to be classified as priority 2 sites. This is the same priority give to sites that are not an immediate safety threat but that have the potential to impact health or safety.

Why we need The 'General Welfare' Provision.

In 403(a) SMCRA sets out the priorities for AML reclamation projects. According to the *law priority (2) sites* are those that pose a threat to public health, safety, *and general welfare*. While *priority (3) sites* are those that impact land and water resources and the environment. *Priority (1)* is the category for sites that pose a direct threat. The 'general welfare' clause allows state agencies to classify sites that are not threaten health or safety but do impact the overall welfare of a community as a higher priority.

In many cases, toxic mine drainage degrades the welfare of a community even if it is not a threat to safety. In other cases, there are sites—an abandoned highwall in the middle of a huge tract of company land for example—that are potential safety threats but do not directly impact the welfare of a community. The 'general welfare' clause gives equal priority to a site that oozes toxic mine drainage into a stream that flows through the heart of a community as a highwall that is surrounded by acres of undeveloped land.

Without the 'general welfare' clause AML sites that cause community problems but are not dangerous would all have to be classified as priority (3) sites and would not be able to be addressed until all the *potential* safety threats are cleaned up.

The 'general welfare' clause should be preserved in SMCRA so that sites that have a community impact can continue to be treated as a high priority even if their impact is not defined as related to health or safety. The communities experiencing these impacts know that the effect of contaminated water is one of degradation to health, safety, and the economy.

The AML Fee Should Be Increased

To adjust the AML fee to reflect inflation, it should be raised to $1.09 for strip-mined coal and $0.47 for deep mined coal. This would help provide adequate funding for AML and still allow for funding for the other burdens, such as the UMWA Combined Benefits Fund.

The AML fee (35 cent per ton of strip mined coal and 15 cents per ton of deep mined coal) has remained the same since 1977. The fee has never been adjusted upwards to reflect the rising cost of reclamation, which has risen with inflation. In 2004 and now in 2005, proposals have been put forward that would reduce the AML fee. Given that only two thirds of all the abandoned mine land sites have been reclaimed we cannot afford to reduce the AML fee.

The selling price of coal has recently more than doubled. Instead of looking at reducing the fee Congress should look at the option of increasing it.

REMINING: CITIZENS COAL COUNCIL CONCERNS ABOUT THE USE OF AML FUNDING TO SUBSIDIZE "REMINING" OPERATIONS

Background

Many state regulatory agencies are promoting the possibility of coal companies reclaiming abandoned mine sites in the process of doing new mining. This approach to address the abandoned mine land issue has had success in some parts of the country but has caused great concern among local residents in other areas.

The term "remining" gets applied to two very different activities. One is when a coal operator mines coal on an abandoned mine site. In this case, because the law now requires reclamation, a remining operation must also reclaim the area. The second activity that the term is applied to is the reprocessing of coal refuse piles. In this situation, the refuse pile is actually mined for remnant coal—there is no new surface disturbance. Sometimes remining is promoted as a way to reclaim abandoned mine sites that would otherwise be cleaned up by the Abandoned Mine Land (AML) program.

There is a difference between remining and reclamation of abandoned mine sites: the purpose of AML reclamation is to reclaim a site that was left abandoned; the purpose of "remining" is to remove coal. Under current AML law if the purpose of an operation is to remove coal, it must be permitted as a coal mine not an AML reclamation job.

In the mining regulations, there are provisions that loosen requirements on operators that are mining an area that has been previously mined. (E.g. operators are held to less stringent water quality standards) There is not language in AML law that links remining and AML reclamation. The purpose of the AML program and fund is not to encourage or subsidize new mining but to pay for reclamation of an area, which was damaged by mining before 1977.

Remining operations are "mining" operations

There is a relevant distinction between mining projects where the goal is to mine coal and reclamation projects where the goal is to reclaim an area mined before 1977. Any remining operation brings with it the same potential environmental hazards and community impacts as any other mining operation. *Remining should only be subsidized with AML money if the primary purpose and goal is reclamation.* And, there is already a provision in Title IV of SMCRA that allows sale of coal, which is removed in the process of an AML reclamation job to be used to off set the cost of AML reclamation.

Reprocessing of coal refuse

To the extent that this type of remining (reprocessing refuse coal) can be done without new surface disturbance it should not be discouraged. *When Congress or federal agencies make decisions about remining they should clarify which type of remining is the subject of the decision.*

Remining as cover for controversial mining projects

In remining, the motivation for the operation is coal extraction; the AML reclamation is an incidental benefit. Coalfield residents are very weary of remining activities being used to justify controversial mining projects. This is particularly the case in the steep slope areas of the southern mountains where mountaintop removal has become a dominant form of surface mining. *If Congress ties AML to remining incentives it should include a provision that prohibits the use of AML money to subsidize mountaintop removal and cross ridge mining projects.*

Use of AML money for performance bonds

Performance bonds are the mechanism in SMCRA that help insure that if a company does not complete reclamation on a new mining project there will be money to pay for clean-up of that site. In addition, the bonds are away of encouraging companies to follow the law and reclaim the land they disturb, that is, if the company leaves a new mine without reclaiming it they loose money. *Using AML money for performance bonds is simply irresponsible. It takes away the financial risk to companies of bond forfeiture thus leaving the company with less incentive to reclaim the site.*

Remining projects expanding outside of the original AML site

There is significant concern that remining activities will take in acreage outside of the original AML site. *If a mining project that includes "remining" takes in additional acreage outside of the original AML site then AML funds should not be used to subsidize the mining outside of the AML area.*

Using AML money to encourage remining of areas with AMD

Remining AML sites always has the potential to increase the size of the problem. This is especially the case with AML sites that produce toxic drainage. While the reclamation associated with a remining job might help alleviate a toxic mine drainage problem, depending on the nature of the problem, the surface disturbance that is part of any mining operation will likely expose more toxic materials to air and water increasing the problem.

Exempting remining from environmental standards

While the reclamation associated with a remining job might help alleviate a toxic mine drainage problem, depending on the nature of the problem, the surface disturbance that is part of any mining operation will likely expose more toxic materials to air and water increasing the problem. *If AML funds are used as an incentive for a new mining operation this operation should have to demonstrate that the reclamation required by SMCRA is feasible and there should be no reduction of environmental standards for that operation.*

CCC urges members of the Senate Energy Committee and Congress to carefully take a "hard look" at any proposed Senate or House bill that would allow federal funds to be used for "remining" activities. At first it sounds like a great idea and reasonable use of federal funds, but the potential long-term cost may put an unreasonable burden upon Congress to fund perpetual treatment of AML "remining" sites. Everyone makes choices in life. To define and allow federal funds for incentives to

conduct "remining" surface and underground coal mining operations must carry the strongest possible assessment and evaluation procedures within any proposed AML reform bill. The current bills do not. The full measurement of pre-permitting and post-reclamation of AML so-called "reclaimed" sites is unknown as compared to current permitting to carry out the present federal and state AML Reclamation Programs. There are existing alternatives to reclamation of AML sites as compared to just "remining" AML sites. These alternative reclamation activities could be more cost effective. We ask that the Senate Energy Committee and members of Congress require a more detailed AML Reform Reclamation bill that outlines the full ramifications of allowing "remining" of AML sites while other alternatives are available to the Office of Surface Mining Reclamation and Enforcement.

CONCLUSION

Citizens Coal Council has been a voice for citizens who live in the coalfields of our nation and charges this committee and Congress to address our concerns. Congress and this committee are currently on a mission to expand the production and uses of coal throughout the nation. Because Congress is actively encouraging this vigorous expansion of the uses of coal, Congress cannot forget or overlook that ALL USES OF COAL REQUIRE MINING IN THE COALFIELDS. CLEAN COAL REQUIRES MINING IN THE COALFIELDS. COAL GASIFICATION REQUIRES MINING IN THE COALFIELDS. HYDROGEN FROM COAL REQUIRES MINING IN THE COALFIELDS. Given the current events in our nation, Congress must assume a "guarding" role as protectors of our nation's watersheds and community water supplies. Homeland security starts in the local communities in our nation. Coalfield citizens are NOT secure. Their children sleep in their clothes in case flooding occurs from the mountain top removal site or remined steep slope near their homes. Children are killed while they sleep in their beds by boulders or by overloaded coal trucks while they travel on their roads. Their homes and resources are blasted and broken. Their streams are unfishable. Their water undrinkable. We have sacrificed our communities in the past for this nation. We continue to be asked to sacrifice our quality of life. We deserve to have our needs met, and we ask that the Senate Energy Committee and members of Congress will put coalfield citizen's concerns first when acting upon any AML reclamation reform. Thank you for this opportunity to submit comments. Submitted by the Citizens Coal Council, P.O. Box 1080, Washington, PA 15301. Contact: Landon Medley at 931 946-2951 or Beverly Braverman at *mwa@helicon.net* or 724 455-4200.

SAVE OUR CUMBERLAND MOUNTAINS,
Lake City, TN, October 11, 2005.

Mr. STEVE WASKIEWICZ,
Staff Assistant, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. WASKIEWICZ: SOCM would like to submit the following and the attached documents to the record from the AML Reauthorization Hearing that was held on September 27th.

Save Our Cumberland Mountains (SOCM) is a grassroots organization that has worked on environmental justice in the Tennessee coal fields. SOCM has over 2500 members in Tennessee and is also a member of the Citizens Coal Council a national coalition of coalfield organizations. SOCM appreciates this opportunity to submit comments on the Senate hearing on Reauthorization of the Abandoned Mine Land Program.

SOCM encourages members of Congress to act to reauthorize this important program. There are still several hundred Abandoned Mine Land sites in Tennessee that need to be reclaimed and hundreds throughout the country. However, SOCM is concerned about some of the provisions in the exiting AML reauthorization proposals. Two of our concerns, which are outlined in the attached documents, are the elimination of the general welfare clause and new subsidies for remining operations.

The attached document titled "Concerns about Cubin-Rahall-Peterson and General Welfare Funding" refers to a Cubin-Peterson-Rahall proposal. This proposal was included in the record by Senator Talent (and referred to during the hearing) on behalf of the "AML/Coal Act Reform Coalition."

The attached document "Remining in the Southern Mountains: Concerns of Coal Field Residents" was prepared by SOCM and the Citizens Coal Council. It comments on the remining incentives that are included in the Thomas bill as well as

the continuation of regulatory incentives that are part of both the Thomas and Rockefeller Bills.*

Thank you for the opportunity to submit comments for the record. Sincerely
Sincerely,

JONATHAN DUDLEY,
Strip Mine Committee, staff.

[Enclosures.]

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*The attachments have been retained in committee files.