



## WESTERN GOVERNORS' ASSOCIATION

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May 21, 2007

The Honorable Dirk Kempthorne  
U.S. Department of the Interior  
1951 Constitution Ave. N.W.  
Washington, DC 20240

Dear Secretary Kempthorne:

As Chairman of the Western Governors' Association, I am writing you on an issue of concern to western states regarding the Abandoned Mine Land (AML) Program which was established under Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Last December, Congress - with strong support from the States - reauthorized the AML Program in the Tax Relief and Health Care Act of 2006. Attached is the Western Governors' Association resolution adopted by the Governors in 2005 on this issue. In our resolution we specifically told Congress we supported legislation that "does not inhibit the ability of states to address high priority non-coal projects."

The reauthorization will allow the States to continue, and expand, the work of mine hazard abatement and environmental restoration of abandoned mine lands in the West. However, we are concerned that the Office of Surface Mining Reclamation and Enforcement (OSMRE) is interpreting the new law in a manner that would inhibit western states from addressing the most significant threats from abandoned mines.

Under SMCRA, Congress has allowed States to address public health and safety hazards at all prior mining operation - both coal and non-coal - through their AML Programs. See 30 U.S.C. 1239 (SMCRA section 409). In western States such as New Mexico, Colorado and Utah, the AML Programs have employed their Title IV grants to protect public health and safety from the threats posed by both coal and non-coal abandoned mines. These threats are significant and growing. For example, in New Mexico it is estimated over 10,000 mine openings remain; the overwhelming majority of these openings are at abandoned non-coal mines. All the fatalities in New Mexico over the past few decades have occurred at non-coal abandoned mines. And with urban growth pushing into undeveloped areas and recreational uses increasing, the threat to public health and safety from abandoned mines is increasing. This is true in other States as well.

The reauthorization of the AML program by Congress did not in any way change the provisions that allow AML funds to be used for either coal or non-coal mine public health and safety hazards. Yet, OSMRE is about to propose rules that would prohibit the majority of funds going to western, non-certified States from being used on non-coal abandoned mines. This change clearly flies in the face of Congressional intent.


Had Congress intended to restrict funding for non-coal projects, they could have easily done so. Instead, as requested by the Western Governors' Association, Congress provided for the distribution of the amounts in the allocated but unappropriated state share balances, and increased the flexibility on the use of such distributed funds by the certified States.

OSMRE's new interpretation of SMCRA is without support in the law. Section 409 of SMCRA provides that funds allocated to the States under either the "state share" formula or the "historic share" formula (Sections 402(g)(1) and (5)) are available to safeguard high priority non-coal hazards. Despite Congress' decision to leave Section 409 unaltered, OSMRE has decided suddenly that historic share funds are no longer available for non-coal hazards. Congress did decide to provide for the States to receive the amount of state share funds that had been previously allocated to the States but not appropriated. Even more remarkably, OSMRE has now decided that these funds are no longer available for abatement of non-coal hazards.

OSMRE's new interpretation is also a dangerous policy choice. OSMRE claims that once a State has completed all of its coal projects, then it can use all of its grant funds for non-coal projects. However, under OSMRE's new interpretation, in order to complete its coal projects, New Mexico will spend years working on high cost, low priority coal projects that present little threat to public health and safety while numerous, highly hazardous abandoned non-coal mines remain unattended. This is a dangerous, and completely unnecessary, risk that OSMRE is imposing on the States and our citizens.

Western states are determined to address the unabated hazards at both coal and non-coal abandoned mines. While the non-coal hazards represent some of our greatest threats to public health and safety, given the scope of the task – over 10,000 mine openings – we will be working on non-coal mines for many decades to come. It is essential that we fulfill the intent of Congress to address the greatest threats to public health and safety whether they are at coal or non-coal abandoned mines. Therefore, we request that OSMRE adhere to the Congressional intent and continue to provide States with the flexibility to use Title IV funds for high priority coal and non-coal sites and not impose any new restrictions on the use of the funds.

Sincerely,



M. Michael Rounds  
Governor of South Dakota  
Chairman

Attachment

cc: Brent Wahlquist, Acting Director, Office of Surface Mining Reclamation and Enforcement, DOI