

# **REAUTHORIZATION OF THE COAL PRODUCTION TONNAGE FEE SUPPORTING THE ABANDONED MINE LAND RECLAMATION PROGRAM**

## **BACKGROUND**

### **Basic AML Provision, What Expires/What Does Not**

The Surface Mining and Control and Reclamation Act of 1977 included an Abandoned Mine Reclamation Program (Title IV) funded by a fee imposed on each ton of coal or lignite mined: 35 cents for surface mined coal; 15 cents for underground mined coal and 10 cents for lignite. The purpose of the program is to reclaim lands, waters and infrastructure adversely affected by coal mining operations prior to the date of enactment. At least one-half of the revenue collected in a state is to be returned to the state. The AML reclamation program authorization is for an indefinite period. However, the authorization of the fee is for a set period of time: 15 years in the 1977 Act and a 12-year extension expiring in 2004.

Since the original enactment, Congress has amended Title IV several times. Most amendments provided sharpened focus to the broad general program authority in the original bill. For instance, specifically focusing use of the monies for acid-mine drainage remediation activities including allowing the escrow of funds for covering long-term treatment and operation costs. However, the 1992 amendments expanded the Title IV program to include funding of health benefit obligations for retired UMWA coal miners who were once covered under labor/management contracts, but for which no existing coal operator has responsibility. The appropriations legislation for FY'03 has further expanded this authority.

The 1992 amendments extending the AML fee until 2004 also included an automatic extension for funding the CBF. The Act now provides for the Secretary to set the fee at a level sufficient to cover the costs of the Combined Benefit Fund after 2004. It is estimated this fee could exceed 11 cents/ton in order to annually liquidate CBF liabilities.

### **AML Reclamation Needs**

Prior to the passage of the Surface Mining Control & Reclamation Act in 1977, estimates of the abandoned mine land reclamation requirements were derived from a scientific sample of observations and measures which were then extrapolated to the general area within the continental U.S. of known surface and underground coal mining. It was estimated that over 1.5 million acres of land had been disturbed and over 11,500 miles of stream had been polluted by sedimentation or acid mine drainage from surface and underground coal mining. Estimates of reclaiming these lands and waters ranged from \$6-\$25 billion. Shortly after passage of the Act, the Bureau of Mines updated the previous work and estimated it would take \$32 billion to reclaim these lands and waters.

Title IV included explicit priorities for reclamation projects. Priorities 1 and 2 involved protection of the public health, safety and general welfare, while priority 3 focused on protection of the environment. (Obviously virtually all projects have elements of environmental protection as well as protection of the general welfare.)

Current OSM estimates of the costs for correcting remaining priority 1 and 2 coal related projects is \$6.6 billion, the coal related priority 3 projects exceeds \$30 billion. Nearly 50% of the

priority 1 and 2 cost estimates are watershed-wide remediation projects in Pennsylvania. (Due to population density and related environmental and economic factors including water supply, the Commonwealth takes a total watershed approach as opposed to addressing individual sites only.) Total costs for priority 1 and 2 projects will increase significantly if other Appalachian and mid-western states inventory and rank their projects on a watershed basis as has Pennsylvania.

Over the past 30 years, the number and cost of priority 1 and 2 projects has increased due to changes in land-use or natural conditions. Construction of residences, commercial buildings, roads and other facilities sometimes encroach on lands near abandoned mines resulting in changes in hazard risks. For instance, major precipitation events trigger landslides (which poses a threat to recently developed property or increased surface activity) and may lead to subsidence in areas previously determined of low interest or not subsidence prone. Last summer, a Colorado forest fire was triggered by a long-burning underground coal mine fire in a remote area. The combination of four years or more of drought and the extremely low moisture content of forest trees and their roots, coupled with a sustained change in atmospheric pressure, allowed the underground fire to migrate upward into the root zone and start the forest fire. In this instance, what was previously a low-priority environmental problem became a high priority hazard to the public health and safety. These examples indicate the need for states to regularly reassess reclamation priorities.

It is reasonable to expect that increases in the number and extent of priority 1 and 2 projects will continue into the future. The current inventory is not static.

#### AML Fund Balances:

Total funds collected under the Title IV program since its inception, 25 years ago, (Sept. 1977 through Sept. 2002) is nearly \$6.6 billion. Approximately \$5.06 billion has been appropriated for administrative and program purposes.

The unappropriated AML balance is now at \$1.536 billion; \$981 million or 64% of which are unappropriated state share monies. The Western States and Tribal share of the state-share balance is \$544.42 million, or 55% of the total. (See **Table 1. Source: OSM website**)

The FY'02 rate of fee collection is slightly more than \$287 million. The proposed total SMCRA program funding for FY'04 is under \$282 million; \$107 million for the regulatory and technology program and \$175 million for the AML program. This reflects what appears to be the annual cap on the entire active mine regulatory and abandoned mine land reclamation program--keeping the cost of both programs below the revenues from the Title IV fee. While this satisfies a 'budgetary convenience', in that the entire program does not cost the U.S. Treasury a dime, it is not what Congress intended at the time of passage. Such a constraint contravenes the intent of the Act to provide sufficient resources to the States for regulatory programs, addressing AML issues and assuring that state-share AML funds are made available to the states on a timely basis.

Unless the dynamics of the appropriation/budget process are changed, there is reason to expect the unappropriated balance of AML funds will continue to steadily increase during the period of the AML fee extension.



**Table 1.**  
**State Share Balance**  
**Current status**

State	9/30/02	12/31/02	3/31/03	6/30/03
Alabama	\$16,024,676.91	\$16,500,198.10	\$	\$
Alaska	1,880,228.65	1,927,477.60	-	-
Arkansas	5,476.58	5,917.40	-	-
Colorado	21,063,009.40	21,973,300.36	-	-
Illinois	27,640,805.51	28,404,532.77	-	-
Indiana	37,218,608.72	38,566,626.82	-	-
Iowa	38,264.85	38,264.85	-	-
Kansas	410,499.50	419,910.46	-	-
Kentucky	116,907,232.87	120,549,666.32	-	-
Louisiana	1,194,216.58	1,246,484.08	-	-
Maryland	2,952,329.58	3,064,398.05	-	-
Mississippi	0	124,095.08	-	-
Missouri	917,666.07	931,312.60	-	-
Montana	42,490,641.10	43,858,308.36	-	-
New Mexico	19,506,738.37	20,221,360.40	-	-
North Dakota	10,906,597.66	11,301,342.00	-	-
Ohio	22,769,609.14	23,398,049.77	-	-
Oklahoma	1,991,247.13	2,039,670.84	-	-
Pennsylvania	54,706,821.96	56,271,895.07	-	-
Texas	18,366,037.94	18,964,989.51	-	-
Utah	13,223,218.06	13,662,952.37	-	-
Virginia	24,601,619.09	25,342,092.95	-	-
West Virginia	115,800,325.65	120,066,292.17	-	-
Wyoming	354,522,825.31	371,068,164.91	-	-
Crow Tribe	6,604,738.86	6,847,219.56	-	-
Hopi Tribe	5,009,785.64	5,175,592.19	-	-
Navajo Tribe	28,015,271.74	29,000,123.40	-	-
<b>Total</b>	<b>\$944,768,492.87</b>	<b>\$980,970,237.99</b>	<b>\$-</b>	<b>\$-</b>

The Surface Mining Law specifies that 50 percent of the reclamation fees collected in each state with an approved reclamation program, or within Indian lands where the tribe has an approved reclamation program, are to be allocated to that state or tribe. This 50 percent is designated as the *state or tribal share* of the fund. The remaining 50 percent (the federal share) is used by the Office of Surface Mining to complete high priority and emergency projects under its Federal Reclamation Program, to fund the Small Operator Assistance Program (SOAP), to fund additional projects directly through state reclamation programs, and to pay collection, audit, and administrative costs. Following is the state share balance of the Abandoned Mine Land Fund for FY 2003. The right column is the current balance.

## Combined Benefit Fund: Current Data and Potential Demands

The Combined Benefit Fund was created by the enactment of the 1992 Coal Industry Retiree Act to guarantee the health benefits for those miners and spouses who were receiving benefits as of July, 1992, from the UMWA 1950 and 1974 coal contract benefit funds. This is a defined set of retirees and dependants, with known demographics, having an average age of roughly 78 years old. Retiree benefits were a central part to the UMWA contracts negotiated with the Bituminous Coal Operators of America (BCOA), the union-negotiating consortium of large independent and integrated coal companies, which once dominated coal production in the U.S. Payments by these coal companies into UMWA Benefit funds, as well as by on-going operations, were presumed to be sufficient to meet the retirement obligations.

However, this has not been the case. Many of the signatory companies have not grown proportionately with the increase in national coal production over the last several decades, and some have gone out of business. Others are in the throes of re-organization or bankruptcy. The UMWA Benefit funds have been depleted, and are currently running deficits. Ongoing premiums from the remaining companies are indexed to the Medical CPI, but are lagging the actual increase in health expenses per beneficiary. Specifically, solvent coal companies pay a retiree premium health of \$2,852/yr/person, but the actual CBF costs are \$4,855/yr/person -- resulting in a \$2,000/person premium deficit.

The original 1992 provision adopted by Congress uses interest derived from the unappropriated balance of AML funds to supplement CBF resources to meet retiree needs. The CBF need at that time was for funds to support the 'unassigned beneficiaries', those retirees for which no current operating company was responsible for payments. In 1992, the CBF had approximately 102,700 beneficiaries, of which 25,100 were 'unassigned'. The monthly attrition rate was approximately 448 for the CBF and 77 for the 'unassigned'. The current number of CBF beneficiaries on 12/31/02 as provided by the UMWA is 48,445. (See **Table 2, Source UMWA**).

Even though the unappropriated AML balance has grown over the last decade, the interest rate used by the Treasury (overnight funds rate) has dropped significantly -- from a high of 5.8% in 1995 to the current level of 1.25% -- generating about \$28 million/yr. The current annual revenues are insufficient to cover CBF shortfalls. Additional funds are likely to be needed to off-set the annual net-deficits of the CBF, which include payments for the premium shortfalls of assigned beneficiaries as well as the unassigned. BCOA estimates that \$67 million will be needed for FY'03 for the unassigned beneficiaries, but nearly \$93 million to cover all beneficiary costs, including some additions from steel industry bankruptcies. The values for FY'04 are \$78 million and \$123 million, respectively. Current projections have the level of outside money required increasing to \$146 million for FY 2005, then decreasing at roughly \$5 million/yr to \$121 million in 2011. (See **Table 3, Source: BCOA**).

It should be noted that the transfer of interest by the Secretary to the CBF account -- is an off-budget action -- as is the eventual pay-out of benefits to the medical provider. The Social Security Administration administers the CBF program.

### Potential Amendment Options for the CBF

(1) In order to increase the amount of interest yielded by the \$1.6 billion AML balance, the legislation could include a provision directing the Treasury to use the 20 yr bond rate for



**Table 2.**  
**Combined Benefit Fund Beneficiaries**  
**by State**  
**As of 12/31/2002**

State	Beneficiaries	State	Beneficiaries
AK	16	NC	449
AL	1,856	ND	4
AR	228	NE	7
AZ	132	NH	7
CA	241	NJ	87
CO	526	NM	97
CT	20	NV	30
DC	14	NY	160
DE	43	OH	3,250
FL	1,046	OK	188
GA	157	OR	24
IA	21	PA	9,466
ID	19	RI	3
IL	1,394	SC	157
IN	784	SD	2
KS	64	TN	1,296
KY	6,056	TX	107
LA	17	UT	558
MA	13	VA	4,304
MD	286	VT	4
ME	2	WA	132
MI	306	WI	18
MN	12	WV	14,531
MO	90	WY	140
MS	27	Other*	3
MT	51	Total	48,445

\*Beneficiaries either living in Canada or having missing information on state.

Table 3—CBF Summary of Cases

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Combined Benefit Fund Population Trends							Combined Benefit Fund AML Transfers Summary of Cases (\$ in Millions)					
Assigned Beneficiaries	Current Assigned Beneficiaries Potential Transfer to Unassigned		3/ Currently Unassigned Beneficiaries	Total Beneficiaries	Annual net health expenses per beneficiary	Estimated AML Transfers for Unassigned Beneficiaries with Current Law			4/ Estimated AML Transfers for Unassigned Beneficiaries and Deficits			
	1/ Steel Ind. Bankruptcy Beneficiaries	2/ Other Potential Unassigned Beneficiaries				1/ Currently Unassigned	2/ Unassigned with Steel Ind. Bankruptcy	2/ Unassigned with Steel Ind.; Other Potential	1/ Currently Unassigned & Deficits	2/ Unassigned with Steel Ind. Bankruptcy & Deficits	2/ Unassigned with Steel Ind.; Other Potential & Deficits	
2003	28,570	2,950	4,000	13,890	49,410	\$4,855	\$67	\$82	\$101	\$93	\$101	\$113
2004	26,000	2,690	3,630	12,520	44,840	\$5,106	\$64	\$78	\$96	\$104	\$112	\$123
2005	23,610	2,440	3,280	11,240	40,570	\$5,361	\$60	\$73	\$91	\$128	\$136	\$146
2006	21,350	2,210	2,960	10,080	36,600	\$5,698	\$57	\$70	\$87	\$125	\$132	\$141
2007	19,270	1,990	2,660	9,010	32,930	\$6,095	\$55	\$67	\$83	\$123	\$130	\$138
2008	17,330	1,790	2,390	8,030	29,540	\$6,529	\$52	\$64	\$80	\$121	\$127	\$135
2009	15,530	1,610	2,140	7,150	26,430	\$6,953	\$50	\$61	\$76	\$117	\$123	\$130
2010	13,890	1,440	1,910	6,340	23,580	\$7,425	\$47	\$58	\$72	\$114	\$119	\$126
2011	12,400	1,280	1,700	5,620	21,000	\$7,927	\$45	\$55	\$68	\$110	\$115	\$121

Assumptions:

- 1/ Various steel companies covered by the Coal Act (LTV, Bethlehem, National Steel, Wheeling-Pitt) are currently in liquidation or Chapter 11 bankruptcy. Projections assume approximately 50% of these beneficiaries will be moved from assigned to unassigned status in FY 2004 as a result of the LTV liquidation.
- 2/ Projections of 'Other Potential Unassigned' Beneficiaries show the impact if other steel and coal companies currently in bankruptcy were liquidated (Bethlehem, National Steel, Kaiser Steel, W-P Steel, Horizon Resources, Wyoming-Pocahontas currently account for 3,995 beneficiaries). There is a high probability that all or nearly all of these companies will be liquidated within the next few years.
- 3/ Unassigned beneficiaries exclude all Dixie Fuel case beneficiaries. Initial FY 2003 billing included approximately 1,200 court ordered Dixie Fuel unassigned. January 2003 Supreme Court decision (Barnhart v. Peabody) reversed these court orders and all court ordered Dixie Fuel beneficiaries will be reclassified to assigned status.
- 4/ CBF deficits exclude borrowing costs and or investment income (per GAO methodology for calculating CBF annual deficits).
- 5/ Highlighted cells reflect the most likely timeline for the addition of unassigned beneficiaries.

Source: BCOA analysis of Combined Benefit Fund population and expense projections with revisions for reclassification of "Steel Industry" and "Other Potential Future" beneficiaries to unassigned (per assumptions 1/ and 2/).

computing interest (Sec 401(e)). This would raise the current interest rate from 1.25% to approximately 4.5%.

(2) Restructuring the existing legislative provision to direct the Secretary to transfer annually to the CBF the combination of all interest earned and the least amount of principal necessary from the unappropriated balance to eliminate the net deficit of the CBF provides guidance on the preservation of the principal. [Transfer of both the interest and the principal will be a bookkeeping exercise, as will the current transfer of interest, and does not affect OSM's budget posture or the amount of on-going AML revenues to meet the state-share obligation and federal share appropriations apportioned to states on an historic basis.]

### Recent & Relevant Congressional Legislative Activities

Legislation introduced in the House of Representatives and U.S. Senate last year relevant to the AML reauthorization issues included the following measures: (action was taken on the proposals listed in bold print.)

HR 297: Abandoned Mine Lands reclamation Reform Act of 2001, Rep. Rahall (West Virginia)

1. Extends fee until 2011.
2. Deletes funding for RAMP and allocates funds on 'historical' coal mining basis.
3. Mandates and refocuses reclamation on priorities 1 and 2 for coal projects.
4. Allows for states to establish trust funds for long-term acid mine drainage control.
5. Third parties can trigger the Secretary's determination if State can be certified that all priority 1 and 2 coal projects have been completed.
6. Limits expenditures on non-coal projects unless directly related to/impacted by coal.
7. Provides for infrastructure replacement and construction.
8. Transfers all remaining interest to the CBF.
9. Authorizes use of any AML funds to pay the amount of any net deficit in the assets of the CBF.

HR 1145: Rep. English (Pennsylvania)

1. Provides that all AML funds on an annual basis are made available to the Secretary of Interior without further appropriation or fiscal year limitation.  
[This takes the entire AML fund off-budget and provides it to the Secretary to administer without oversight of the Appropriations Committee.]

**HR 3813: Coal Accountability and Retired Employee Act for the 21<sup>st</sup> Century**, Rep. Rahall (West Virginia)

1. Transfers all interest, without limitation, to the CBF to offset any deficit in net assets in the Combined Fund.
2. Appears to imply the potential use of AML receipts (principal) to offset any deficit in the net assets of the CBF.
3. This provision ceases to have any force after September 30, 2004.  
[This provision was passed by the House of Representatives under suspension of the rules, with no roll call vote, on October 1, 2002. The same did not act on the provision.]

**House Concurrent Resolution 425: Calling For the Full Appropriation of State and Tribal Shares of Abandoned Mine Reclamation Fund, Rep. Cubin (Wyoming)**

1. Identifies individual state and tribal share unappropriated balances in the AML fund.
2. Calls for the FY 2004 Federal Budget to include and assure appropriation of all outstanding state and tribal share balances.

[This provision was passed by the House of Representatives under suspension of the rules, with no roll call vote, on October 1, 2002.]

**HR 4802: State and Tribal Mining Reclamation Fairness Act of 2002, Rep. Cubin (Wyoming)**

1. Directs the Secretary to pay, without further appropriation, to each state and tribe the respective unappropriated balance of the AML funds.
2. Directs future state and tribal share payments without further appropriation.
3. Funds are to be used to meet any of the priorities set forth in Sec 403.

**S. 2637: Coal Industry Retiree Health Benefit Stability and Fairness Act, Sen. Conrad (ND)**

1. Provides for mandatory transfers from the General Fund (US Treasury) without further appropriation, monies to cover (a) administrative costs of the CBF, (b) any benefit of unassigned beneficiaries of the UMWA 1992 Plan, and (c) to eliminate any annual deficit in any premium account of the CBF.
2. Provides for annual audits, appointment of Government Trustees, elimination of unassigned beneficiaries premium on solvent companies, and other administrative items.

[This legislation does not absolve solvent operating coal companies from their contractual obligations for retiree health commitments. It does assure that solvent operators do not have to contribute to the obligations of coal operators, which have gone out-of-business, or to assume such obligations of companies shielded through bankruptcy.]

A companion bill was introduced in the House by Representative Pryce, Ohio.

[This legislation does not refer to the AML funding of the CBF. It replaces the use of AML funds and interest for this purpose with revenues from the General Fund.]

108<sup>th</sup> Congress, January 23, 2003

**Amendment # 167 to the Omnibus Appropriations Bill, FY'04, Sen. Byrd (West Virginia)**

1. Provides for the transfer of up to \$34 million of interest credited to the AML fund to the CBF to offset any deficit in net assets in the CBF.
2. Implies the authority for transfer of principal amounts of the AML fund in order to offset any deficit in net assets in the CBF.
3. This provision terminates on September 30, 2004.

[This amendment was adopted as part of an en bloc set of amendments to the Senate

Appropriations bill on January 23, 2003. This is similar to Rep. Rahall's bill adopted by the House last year, except for the addition of the \$34 million limitation. I understand the \$34 million limitation was part of the cooperative arrangement with Senate colleagues in order to pace the availability of these funds with resolution of issues concerning AML state-share funds availability. The BCOA estimates of the CBF shortfall for this year at \$93 million.]

#### Recent Administration Activities on AML Issues

Last fall, OSM prepared an extensive presentation of various options for legislative approaches on the AML fee and the Title IV program. The underlying assumptions and the options considered reflected the need to have minimum impact on the federal budget and to resolve the conflicting tensions in the program.

The underlying assumptions assuring minimal impact on the Federal budget include:

1. Program appropriations remain level;
2. CBF transfer based on available interest;
3. Interest not available for reclamation;
4. Appropriated funds to States distributed in proportion to historic coal production;
5. RAMP program discontinued.

The conflicting tensions or competing promises in Title IV are:

1. Return 50% of AML fees to state of origin;
2. Reclaim abandoned sites mined prior to 1977.

The program options initially considered included:

- (a) let the AML fee expire in 2004 and continue the program at current levels until unappropriated balances are exhausted;
- (b) extend the fee, but allow the Secretary's share of collections to be spent only on priority 1 and 2 coal projects;
- (c) extend the fee with no new additions to the inventory of AML problems;
- (d) extend the fee, but reduce the rate by one-third;
- (e) extend the fee, but exclude expenditures on priority 3 coal problems;
- (f) extend the fee, eliminate state-shares, and expend funds only on priority 1 and 2 coal projects (essentially eliminates any funds going to the West).

On a parallel track last fall, the Office of Management and Budget (OMB) examiner for the program indicated there was some support within the Administration for not renewing the fee and letting the States impose a reclamation fee instead. OMB was also interested in the link between States implementing the coal mine regulatory program (Title V) and the availability of AML funds for reclamation.

In response to the queries from OMB, the National Association of Abandoned Mine Land Programs organized a letter writing campaign from the Governors of the affected states to the Office of Management and Budget, stressing the importance of the program in repairing the damages from past coal mining and indicating the need for the continuance of the fee collection to fund the reclamation program. Enactment of an AML reclamation fee on a state-by-state basis was impractical and in any event would not replace the revenue stream from the federal fee.

Some states further indicated that they may be hard pressed to continue the regulatory program if the AML program funding was also made a state responsibility.

OMB heeded the advice provided and OSM included in its FY'04 budget submission to Congress a statement of intention to submit legislation extending the AML fee. Additionally, OSM and the Department of Interior were to develop options for reauthorization of the fee, with the intent of specifying a date certain for the fee to terminate and to bring the federally-funded program to a close after addressing the most important remaining coal reclamation issues.

## **WGA ACTIVITIES SINCE SEPTEMBER, 2002**

A central element of the effort last fall was to ascertain if a coalition could be formed with Eastern and mid-western states to support:

- a) provisions assuring the return of the states' share of any new collections (fee extension) without the need for annual appropriations (as are the state's share of federal mineral royalties),
- b) provisions for the return of the unappropriated balance of state-share funds, and
- c) assure the National Association of Abandoned Mine Land Administrators does not advance a position contrary to Western interests.

Field visits to four key eastern/mid-western states and to the staff of the Interstate Mining Compact Commission were made in September and October. These discussions indicated there was positive receptivity to all states working in concert for the objectives identified above.

Subsequent discussions among the states resulted in general agreement on a number of points:

- a) extend AML fee for 12 yrs or more,
- b) future state-share AML revenues returned annually without appropriation,
- c) federal share should be primarily allocated on basis of historic coal production,
- d) remaining unappropriated balance of state share returned in stages as need for CBF wanes appreciably over time, and
- e) state-share funds would be deposited in state accounts dedicated to the purposes of Title IV.

These provisions are intended to provide the states/tribes with greater flexibility and assurance of fund availability for project implementation.

## **CURRENT STATUS**

### Policy and Legislative Agreements Reached by State Program Administrators

At the meeting of the National Association of Abandoned Mine Land Program Administrators (March 3, 2003) the following legislative concepts were adopted. (Draft legislative provisions and explanatory materials have been prepared.)

- 1) State and Tribal share (50%) of annual collections to be disbursed by Treasury each year without appropriation (i.e. these shares would be off-budget),
- 2) Extension of AML fee collection to September 30, 2016,
- 3) Elimination of the Rural Abandoned Mine Program (RAMP) & the 20% set-aside,
- 4) Increase allocation of federal share to 60% for historic production,
- 5) Reauthorize state set-aside programs for post-95 AML sites and for acid mine drainage abatement,
- 6) Minimum State Programs at \$2 million annually, comprised of both state and federal share funds as appropriate,
- 7) Authorize the ability to combine re-mining operations with AML reclamation activities,
- 8) Disposition by direct disbursement from Treasury of the accumulated but unappropriated state and tribal share balances after no longer needed for CBF,
- 9) Elimination of funding cap on waterline projects,
- 10) Encourage NRCS and Soil and Water Conservation Districts (SWCD) involvement in re-mining cooperative projects,
- 11) Delete the requirement for liens,
- 12) Reallocate unappropriated balance of RAMP funds to historic coal production states.

The most substantial amendments are those to extend the fee and to provide for the direct disbursement of state and tribal shares by Treasury on an annual basis. The main issue with the renewal of the fee is the length of time. Twelve years is the duration of the first extension in 1992.

The proposal to take the annual state and tribal share collections off-budget and have these funds deposited in a state trust fund for the purposes of the Title IV program is the one proposal that will likely generate the greatest resistance in Congress and the Administration.

Such a provision removes these funds from the direct jurisdiction of Congressional Budget, Authorization, and Appropriation Committees.

Indirectly, the House and Senate Authorizing Committees could exercise some influence through oversight of the program, which includes both state and federal-share funds. Similarly, the Appropriation Committees could try to influence how the state-share funds are spent by linking the federally-appropriated funds to certain projects (co-funded with state money) or state policies. Conversely, even though Congress does not generally exert such oversight, these are arguments that can be used to support taking the monies off-budget.

From a budget perspective, the proposed change presents a different problem. In general, over the last 25 years, the funds appropriated for the mine regulatory program and the abandoned mine reclamation program have not exceeded the revenues from the AML fee. In short, both Administration and Congressional budget entities viewed the two programs under the Act as a self-sufficient 'pay-go' entity. Legislative history clearly indicates this was not intended by the Authorizing Committees when the act was passed in 1977. Removing the state/tribal share funds

from the budget will leave the Congressional and Administration budgeters with the burden to find roughly \$145 million/year from other revenue sources if appropriations are to be kept at the current level, even though from a global perspective, the \$147 million borders on being a rounding-error in the Federal budget and Congressional budget allocations. None-the-less, it assumes greater magnitude in the individual program by program trade-offs that are made during the appropriation process.

If the effort is successful, it would be reasonable to expect the amount of appropriations to be adjusted. The level of funding for the coal mine regulatory program should remain the same (or increase as is the current need) but the appropriations of the federal share AML funds may decrease somewhat. However, since most of these funds are for the states with the lion's share of the historic coal production, it will be difficult for Congress to cut these funds dramatically. Additionally, House and Senate leadership positions and Senior Committee positions are well represented by Members from these states.

From a political perspective, the proposal to take state/tribal share funds off-budget, fits into the conservative philosophy of government and the intent to increase the delegation of program administration and decisions to the States. This would also provide a basis to reduce the size of the Federal workforce. Currently, OSM reserves 15% of the AML funds for its administrative and other program costs, while acknowledging that some of these monies are used for specific projects. Taking the state/tribal share funds out of the picture will force OSM to reduce the program overhead.

States have a track record of successful AML program administration and capabilities in place. States can absorb increases in funding with no or only incremental increases in staff and overhead costs.

'Donor' states (Wyoming, Texas, Navajo Tribe, etc.), which generate more state share funds than for which they have abandoned coal liabilities, are protected from a change in the risk for the use of such funds. If the off-budget provision fails, then the status quo of the current legislation remains. However, the current OSM fee extension cuts all donor states out from any claim on future revenues, even if the provision for the off-budget distribution of unappropriated funds fails.

#### Status of DOI/OSM proposals/options

While the development of an official position by the Administration is still underway, an OSM representative presented a primary proposal to the winter meeting of the National Association of Abandoned Mine Land Program administrators last week.

The proposal 'resolves' the tension between the "the two conflicting promises" by rewriting the basic commitments contained in the existing Title IV program. The commitment for a 50% state share will be honored up through FY 2004, but with the fee renewal a different set of commitments prevail. The proposal contains the following elements, some of which are evident in Table 4 - Elements of OSM Proposal for Extending AML Fee (**source: OSM**):

TABLE 4.

## Possible AML Distributions if Future Funding Based on Historic Coal

02/12/2003

(\$ rounded in millions)

State	FY 2003 Hypothetical Distribution	Off Budget, Same Formula	State Share Balance as of 9/04	Certified States get State Share Balance in:				Straight Historic Coal
				5 years	10 years	15 years	20 years	
Alabama	\$3.0	\$6.5	\$16.9	\$5.4	\$7.0	\$7.6	\$7.8	\$8.6
Alaska	1.5	2.0	2.1	2.0	2.0	2.0	2.0	2.0
Arkansas	1.5	2.0	-	2.0	2.0	2.0	2.0	2.0
Colorado	2.6	5.5	24.4	2.6	3.4	3.7	3.8	4.2
Illinois	8.5	18.6	29.2	19.9	26.0	28.0	29.0	32.0
Indiana	5.1	11.0	42.1	6.5	8.5	9.1	9.4	10.4
Iowa	1.5	2.0	-	2.0	2.1	2.2	2.3	2.5
Kansas	1.5	2.0	0.4	2.0	2.0	2.0	2.0	2.0
Kentucky	15.8	34.0	127.5	19.5	25.5	27.4	28.4	31.3
Louisiana	0.1	0.2	1.4	0.3	0.1	0.1	0.1	-
Maryland	1.5	2.0	3.6	2.0	2.0	2.0	2.0	2.0
Missouri	1.5	2.0	0.8	2.0	2.0	2.2	2.2	2.5
Montana	3.6	7.4	46.9	9.4	4.7	3.1	2.3	-
New Mexico	1.8	3.8	21.9	2.0	2.0	2.0	2.0	2.0
North Dakota	1.5	2.5	12.1	2.0	2.0	2.0	2.0	2.0
Ohio	5.7	12.4	24.7	12.2	16.0	17.2	17.8	19.6
Oklahoma	1.5	2.0	2.1	2.0	2.0	2.0	2.0	2.0
Pennsylvania	24.5	54.2	58.8	64.4	84.1	90.6	93.8	103.4
Texas	1.5	3.2	19.8	4.0	2.0	1.3	1.0	-
Utah	1.6	3.4	14.8	2.0	2.0	2.2	2.3	2.5
Virginia	3.9	8.5	26.5	6.0	7.8	8.4	8.7	9.6
West Virginia	21.2	45.9	130.8	37.0	48.4	52.0	53.9	59.4
Wyoming	29.7	61.9	420.3	84.1	42.0	28.0	21.0	-
Crow Tribe	0.6	1.2	7.5	1.5	0.8	0.5	0.4	-
Hopi Tribe	0.4	0.9	5.5	1.1	0.6	0.4	0.3	-
Navajo Tribe	2.4	4.9	30.3	6.1	3.0	2.0	1.5	-
<b>Total</b>	<b>\$144.0</b>	<b>\$300.0</b>	<b>\$1,070.4</b>	<b>\$300.0</b>	<b>\$300.0</b>	<b>\$300.0</b>	<b>\$300.0</b>	<b>\$300.0</b>

All distributions after FY 2003 include a \$2,000,000 minimum program funding level.  
Distributions do not include Emergency or Clean Streams Program funding.

1. Extend existing fee to FY 2020 as a final endpoint.
2. All monies collected after 2004 are Federal-share funds. State/Tribal shares are eliminated.
3. Set-aside for RAMP is eliminated.
4. State program funding with post FY 2004 AML collections will cease when the state has certified all priority 1 & 2 coal projects have been completed.
5. 85% of Federal share monies are to be distributed to states on an historical coal production basis.
6. This 85% will be disbursed directly to the respective states as an off-budget action without further appropriation.
7. States will have greater flexibility in implementing their own programs.
8. 15% of federal share funds are for OSM program and other administrative costs as well as reclamation project support.
9. Minimum program states will continue to receive \$2 million/year.
10. All unappropriated state share balances as of FY 2004, will be disbursed to the respective states on a five, ten, fifteen or twenty year time frame, at the option of each state, current certification notwithstanding. These disbursements will be off-budget and without further appropriation. These funds are to be used for Title IV purposes, at the discretion of each state.

Interior officials indicated they have been discussing a program extension structured like this with a number of players in the Administration, Congress, the coal industry, and other interested groups. Reportedly, no one has pushed back on the off-budget dimensions of the proposal, although there has been no formal review by OMB and Departmental budget officers.

It is unclear how this approach protects the resource base for the CBF, especially in light of low interest rates and the escalating annual costs. If the CBF is not protected and the Administration does not come up with an acceptable substitute, the proposal will garner substantial criticism.

A major risk to states/tribes in accepting this approach, is the potential to lose in the legislative process the guaranteed return of existing state share balances in a defined time period and, at that point, not be able to reverse the relinquished claim to any part of future revenues. Additionally, states/tribes with little coal production before 1977, receive none of the post 2004 funds. This would make such affected states/tribes "double losers" under this approach.

As mentioned before, OSM has stated in its FY'04 Budget Submission that it plans to submit legislation extending the fee. If such a proposal includes taking the state share funds off-budget, this becomes an important statement of support for the concept. It may signal a willingness to fight for it in the legislative process.

#### Other Interested Parties

On a parallel track, this fall and winter the Natural Resource Committee of the National Governors' Association updated its resolution on the abandoned mine reclamation policy which, emphasized a number of compatible policies:

- a) Recommends the reauthorization of the AML reclamation fee.
- b) Failure to reauthorize the AML fee may lead states to turn coal regulatory programs over to OSM.
- c) Reclamation fees are intended to be used for the abandoned mine land grant program, and for no other purpose.
- d) Trust fund balances should be fully distributed for their intended purposes.
- e) Future state-share collections should be returned in full to the states.
- f) Support other funding sources for non-coal mine sites in non-coal states.

The resolution is silent on the use of interest from the unappropriated balance of the AML fund for the Combined Benefit Fund. Phraseology with respect to the use of the AML funds and the distribution of state share balances may be sufficiently ambiguous to assume there is no overt opposition to the use of interest for the CBF.

This revised resolution was adopted at the 2003 NGA winter meeting.

#### The Coal Industry

Historically, the members of the National Mining Association, and its predecessors, have been split on the AML fee issue. Some coal companies strongly oppose the fee and any extension, while others are less vocal and willing to take whatever advantage can be gained from the resulting program. There is a consensus to gain agreement on a fixed termination date of the fee and to legislatively build the termination concept into any reauthorization.

BCOA members are interested in having the fee to continue in order to assure the continued support for the CBF and possibly other related obligations that could be supported if additional crises develop.

#### National Environmental Groups.

The renewal of the AML fee will become part of the major environmental groups' agenda. This will become apparent when the issue ripens in Congress and, depending on the nature of the vote, it is likely the extension of the fee will become one of the issues on the "national environmental scorecard" for ranking Members' voting records. At this point, leadership on the issue is being provided by the Citizens Coal Council. The CCC Washington DC representative, John McCormack, is pressing for fee extension until 2025 in order to make sure the critical problems in the historic coal areas are addressed. He has expressed no opposition or concern to the concept of state-share funds being taken off-budget.

#### Congressional Links of Key Potential Support

Eastern and western coal states have senior Senators in key Leadership and Committee positions essential to advancing the program changes discussed.

Westerners are in controlling positions of the Senate Committees involved and Senators from the key eastern coal states are in Senate Leadership as well as Committee positions advantageous to such an effort. The Senate may be the most favorable venue in which the proposal can advance.

In the House a similar situation exists but, given the larger membership on Committees, the dominance of members with coal constituencies is less apparent. Speaker Hastert comes from a coal state that would benefit greatly by an improved AML program developed by the states.

#### Tentative Timetable for Activities in Washington

DOI and industry contact with selected Members and states is on going. While it is expected that these entities are not working in tandem, they likely share some objectives:

- terminate fee at a reasonable date,
- limit use of money to high priority coal projects, and
- possibly assure the unappropriated balance of AML funds remain sufficiently high so the termination of the fee does not mean end of the program.

For example, five plus years of program funding by an unappropriated Fund balance will substantially soften the impact of fee termination. [Such a condition existed when the superfund tax (fee) on petroleum feedstocks expired nearly 8 years ago. There is little interest in re-establishing the fee now even though substantial site remediation remains.]

Authorization Committees in the House and Senate will likely hold oversight or legislative hearings this spring or summer on the AML program and fee renewal issue. Legislative action could well occur this year, but Congress need not act until 2004. While this starts out as a stand-alone issue, it could well be combined with other legislation to enhance passage.

#### Legislative Short-cut

The simplest legislative change for extension of the fee is to change the fee expiration date from 2004 to 2016 or other date. This minimal legislative change could be added to a range of legislation. Since extending the fee assures a continued stream of funds, which is already presumed to be part of the upcoming budgets, it is possible this action could be taken in a budget bill without raising a point of order.

### **NEXT STEPS**

The following steps **are being taken or will likely be taken in the near future:**

- A set of legislative proposals and explanatory materials is being prepared by various state organizations.
- State AML Administrators will be seeking agreement and support from their Governor on the common items.
- There are likely to be informal briefings of Congressional staff on the proposal coming out of the Texas meeting of AML Administrators.

**Securing Congressional adoption of elements favorable to states**, such as automatic return of funds without further appropriation, **will likely require**:

- Emergence of lead Governors from the coal states, including both regional and bi-partisan representation.
- Governors' support communicated to the Secretary of Interior, Congressional committees, and coal state delegations beginning within the next month.
- Testimony by Governors to Congressional committees.
- Dedication of resources to ensure close coordination among state staffs and state organizations in the East and West, and consistent messages to the federal government.