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March 8, 2007

Mr. Brent Wahlquist, Acting Director
Office of Surface Mining Reclamation and Enforcement
U.S. Department of the Interior
1951 Constitution Ave. N.W.
Washington, DC 20240

Program Income: Request to Amend the Federal Assistance Manual

Dear Brent:

We understand that the Office of Surface Mining Reclamation and Enforcement (OSM) is considering, based on concerns raised by states and agency officials, changes to the Federal Assistance Manual (FAM). In particular, OSM is examining the portion of the FAM pertaining to “program income”. The Western Interstate Energy Board (WIEB) Reclamation Committee offers the following proposals to change the FAM.

As you are aware, the Western States that regulate coal mining have become increasingly concerned about the adequacy of funding to support their regulatory programs. In November of last year, WIEB issued a report entitled “An Impending Crisis for Coal Supplies: Demand Rises, Regulatory Grants Fall Short”. That report documents how regulatory grants to the Western States have stagnated while coal production has steadily increased. As a result, some states are actually cutting their staffs while their workload increases.

In light of these funding difficulties, the Western States are very concerned that certain sections of the FAM may require that federal grants be further reduced for those States that collect program income and have federal land under coal permits. These concerns have discouraged several states from collecting program income. The States clearly need to use program income (generally permit fees) to meet their cost sharing requirements for federal grants, If program income exceeds a state’s cost share requirement, which we are not aware has ever

Mr. Brent Wahlquist
March 8, 2007
Page 2

happened, the state should have the option of using the money in a future year or adding the money to the program. Our proposed changes will achieve these goals.

FAM

The authority for the FAM section on program income is derived from the Department of the Interior rule on grants management, 43 CFR 12 Subpart C. The section on program income begins as follows: "Grantees are encouraged to earn income to defray program costs." 43 CFR 12.65(a). The rule gives the DOI agencies 3 options for the treatment of program income: deduction, addition and cost sharing or matching. The OSM FAM provides for 2 of the 3 options: cost sharing and deduction. FAM 1-420-20.B(1) and(2). The FAM then creates a third option which seems to use both the cost sharing and deduction options when a state has federal lands under permit. FAM 1-420-20.B(3).

This hybrid option seems to assume that States have two programs: a federal lands program and a non-federal lands program. In reality, States with federal lands have one program which is funded partly by a federal grant and partly by a state match. The policy of punishing states with federal lands that collect permit fees does not further either the States' or OSM's goals under SMCRA. Therefore, we propose to eliminate that option.

Proposal

1. Delete the federal lands hybrid option: FAM 1-420-20.B(3).

- (3) When a grant includes activities/functions with different matching requirements, the income earned shall be disposed of in accordance with the percentage used in the grant application to determine the final grant amount.

When an A&E grant (50/50 matching requirement) also includes Federal lands activities (100% OSM funded), at the time of application, the grantee shall determine and justify the percent of the total grant request which will be used to fund the A&E and the Federal lands portions of the grant. That percentage will be used throughout the grant to determine the portion of the program income to be applied to the A&E and the Federal lands portions of the grant.

Once this option is removed, then all program income can be used under the cost

Mr. Brent Wahlquist
March 8, 2007
Page 3

sharing option. FAM 1-420-20.B(1). A State's "use" of program income to meet the cost share will be structured according to the State's internal funding requirements. For instance, in Wyoming program income is deposited in the general fund and then the State Legislature appropriates general fund money to meet the cost share, whereas New Mexico is authorized to deposit the program income in a separate fund and then the Legislature appropriates the money from that fund to meet a portion of the match.

2. Create an additional option as allowed under DOI rules. If program income exceeds the match requirement, and can not be spread to other grant years under FAM 1-420-20.B(4), the State should have the option to add the funds to the grant. This will require changes to one section and a new section of the FAM:

1-420-20.A(3): Except as allowed under the addition option below, [a]ny program income which exceeds the State's share of project costs shall be deducted from the Federal share.

New 1-420-20.B(3): When program income exceeds any cost sharing or matching requirement, program income may be added to the funds committed to the grant agreement by OSM and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement (addition option).

Thank you for your cooperation in this matter. Please let me know if you have any questions or concerns about our efforts.

Sincerely,



Rick Chancellor, Chair
Reclamation Committee
Western Interstate Energy Board

cc: Al Klein
Reclamation Committee

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