H.R. 3796 AND H.R. 3778, TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 AND REAUTHORIZE AND REFORM THE ABANDONED MINE RECLAMATION PROGRAM

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

Tuesday, March 30, 2004

Serial No. 108-88

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

92-803 PS WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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LEGISLATIVE HEARING ON H.R. 3796 AND H.R. 3778, TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 AND REAUTHORIZE AND REFORM THE ABANDONED MINE RECLAMATION PROGRAM.

Tuesday, March 30, 2004
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 10:15 a.m., in Room 1324, Longworth House Office Building, Hon. Barbara Cubin [Chairman of the Subcommittee] presiding.

Present: Representatives Cubin, Rehberg, Cole, Pearce, Rahall, and Tom Udall.

Also Present: Representatives Peterson and Sessions.

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. I now call the Subcommittee on Energy and Mineral Resources' legislative hearing to order.

The Subcommittee is meeting today to hear testimony on H.R. 3796 and H.R. 3778, to amend the Surface Mining Control and Reclamation Act of 1977 and to reauthorize and reform the Abandoned Mine Land program.

Under Committee Rule 4(g), the Chairman and Ranking Minority Member can make opening statements, but since we don't have a huge crowd here today, we will certainly welcome Mr. Peterson and Mr. Rehberg to have statements, and likewise, for any other Members who come in.

The Subcommittee meets today to consider legislation that focuses on problems that exist within the Abandoned Mine Land program.

When Congress passed the Surface Mining Control and Reclamation Act of 1977, or SMCRA, it recognized the Federal Government's obligation to clean up years of lax regulation of coal mining operations and direct the reclamation of abandoned coal mines around the Nation.

To fund this reclamation effort, Congress established a fee on coal production to be collected by the Office of Surface Mining in the amount of 35 cents per ton for surface mined coal, 15 cents per ton for underground mined coal, and 10 cents per ton of lignite.

In 1977, western coal mines were just beginning to establish themselves, and western politicians wanted to ensure that a portion of the AML fees went back to the States from which they were collected. A compromise was reached by which 50 percent of the share would be returned to the State of origin and the other 50 percent would be dispersed by the Federal Government based on historic coal production and other Federal priorities. I believe we are aware that, despite the letter of the law, this is not how things have worked out.

Almost $6 billion has been collected for the program since its inception, with about $3.2 billion of that intended for reclamation projects. The program was initially meant to take only about 12 years to complete, but despite the enormous amount of money already collected, it is estimated that at least an additional $6 billion, and anywhere from 12 to 100 years will be needed to complete the work on priority one and priority two sites, the areas of greatest concern to the health and safety of our constituents.

The House and Senate appropriators have not been applying the funds to the States over the years, nor have the projects that needed to be funded been funded. In fact, a little over half of the funds are being appropriated. Year after year, Congress has failed to live up to its promise and States like Wyoming are suffering the consequences.

Wyoming's unappropriated state balance now approaches $425 million, without interest, and the total unappropriated State balance nationwide is as high as $1.1 billion. Yes, that's a "b". This is a huge sum of money that could be put to legitimate reclamation needs to save the lives and protect the environment.

As we look to reauthorize this program, we must find a solution to the appropriations problem and compel the Congress and Administration to live up to their commitments to return 50 percent of the State share balances to the States where they're collected.

When the AML program was started, the vast majority of coal production was done in the East, where most of the reclamation work needs to be done. Over the last couple of decades, though, coal production has migrated West. Wyoming mined coal currently pays for over 40 percent of the AML program. Wyoming money is being used to clean up eastern problems. I don't have a problem with that, as long as Wyoming is treated fairly, too. The future funding of the AML program must ensure that one region of the country, and largely one State, does not pay for a disproportionate share of the reclamation work in another region from a different era.

Further, the law was amended in 1992 to use a portion of the interest earned by the AML to fund the Combined Benefits Fund that pays for unassigned beneficiaries, or retired mine workers whose former companies are no longer in business and no longer pay for their health care premiums.

Rising prescription drug costs, lower interest rates, and an increasing pool of unassigned beneficiaries are stretching the

Combined Benefit Fund, or CBF, to its limits. I have always believed that the CBF obligation and our debt to those workers who toiled in the mines and mills and helped power us to victory in World War II and beyond is a national responsibility, not one that should be heaped upon the shoulders of either the mine workers, a single State, or a limited number of States.

This is a problem that requires a national solution, not one supported solely be the AML fund. Some say the art of compromise is disappearing, but I believe Ranking Member Nick Rahall and I have found a way to adequately fund the health care benefits of those retired miners, and I firmly believe that H.R. 3796, the Cubin/Rahall bill as I call it—and I hope Nick calls it the Rahall/Cubin bill—is a way that we can do that.

I also strongly believe that the Cubin/Rahall proposal best achieves the varied needs of all the AML program States, rather than focusing on just a small handful of problems. It is unconscionable that the Administration's proposal seeks to single out western States and tribes who already bear a disproportionate load of the fund and asks them to forego all future contributions to the AML fund, just for the privilege of seeking the appropriation of monies that they are already authorized to receive.

The Bureau of Land Management estimates released in February state that coal production in Wyoming's Powder River Basin, only one of our four production sites in the State, is expected to increase 80 by the year 2020, and rising to 646 million tons annually.

Assuming the report is correct, and under the 20 percent reduction in the AML fee used in both bills, the State of Wyoming would stand to lose upwards of $75 million per year of State share revenues currently owed. Over the 14-year reauthorization of the Administration's proposal, my constituents would be looking at a cut of over one billion dollars in State shares for the promise of a continued increase in the President's budget and future appropriated dollars of monies we can already receive under law.

There is no difference. Why would we ever think that we would get our money. This Administration won't be around forever to see that we do, and it's at the whims of the appropriators. The President's proposal simply is not a viable option.

Just this week, the House of Representatives will debate whether it's possible to pass—I guess it's going to be this week now—the reauthorization of the TEA-21 bill. Could you imagine if the State of Pennsylvania, for example, was asked to donate millions or billions of dollars to the Highway Trust Fund and receive zero percent back on their payments? It simply doesn't pass the straight face test, and that's the way I feel about this.

The Cubin/Rahall proposal makes great strides toward addressing the needs of all 24 States and tribes who participate in the program. The Cubin/Rahall bill has already garnered wide bipartisan support from many members of States such as West Virginia, Kentucky, Ohio, Indiana, and Wyoming. The list grows every week as folks become educated on the issue and how our bill will affect them. In fact, every single State and tribe in the AML program, all 24 of them, will receive a boost in funding under the Cubin/Rahall bill. The same cannot be said for the Administration's proposal.

We have before us today representatives of the broad stakeholder interests in the AML fund. We will hear many different perspectives and priorities about reauthorization of SMCRA, how the Cubin/Rahall and Administration proposals differ, and in what ways we can move forward in this process. I will do my best to address each of these perspectives as we move forward.

Finally, I have nothing but the utmost respect for my colleague, Mr. Peterson, and I commit to working with him on this issue until we can find an answer. We have worked on issues just as tough as this in the past, from ESA reform to passing an energy bill, and I have no doubts that we will be able to come together for a solution. The AML fund is very complex and contentious, but it is an issue so important that we owe the American people a rational and common sense solution

I look forward to working with Mr. Rahall and Mr. Peterson and other Members of Congress, as well as with the Administration, States and tribes and all the various stakeholders to find a solution to this.

I want to welcome John Masterson, counsel to Governor Freudenthal of Wyoming, who will be here. He does a good job for the State, both John and the Governor, and I look forward to his testimony later on.

After all of that, I would now like to yield to Mr. Rahall.

[The prepared statement of Mrs. Cubin follows:]

Statement of The Honorable Barbara Cubin, Chairman, Subcommittee on Energy & Minerals Resources

The Subcommittee meets today to consider legislation that focuses on problems within the Abandoned Mine Land Program.

When Congress passed the Surface Mining Control & Reclamation Act of 1977, or SMCRA, it recognized the federal government's obligation to clean up years of lax regulation of coal mining operations and direct the reclamation of abandoned coal mines around the nation.

To fund this reclamation effort, Congress established a fee on coal production, to be collected by the Office of Surface Mining, in the amount of 35 cents per ton for surface-mined coal, 15 cents per ton for underground-mined coal, and 10 cents per ton of lignite. In 1977, western coal mines were just beginning to establish themselves and western politicians wanted to ensure that a portion of the AML fees went back to the states from which they were collected.

A compromise was reached by which 50 percent of the share would be returned to the state of origin, and the other 50 percent would be disbursed by the federal government based on historic coal production and other federal priorities. I believe we are aware that, despite the letter of the law, this is not how things have worked out.

Almost $6 billion has been collected for the program since its inception, with about $3.2 billion of that intended for reclamation projects. The program was initially meant to take only about 12 years to complete. But, despite the enormous amount of money already collected, it is estimated that at least an additional $6 billion and anywhere from 12 to 100 years will be needed to complete work on priority one and two sites, the areas of greatest concern to human health and safety.

The largest problem we face is that the money being collected is not being appropriated back to the states and to the AML program as it should be, preventing the important dirt work from being done. The original 1977 statute made a commitment that half of the money would be returned to the states from where they were collected.

The House and Senate Appropriators have not been applying the funds to the states, nor to the projects that need to be funded. In fact, little over half of the funds are being appropriated. Year after year, Congress has failed to live up to its promises, and states like Wyoming are suffering the consequences.

Wyoming's unappropriated state balance now approaches $425 million, and the total unappropriated state balance nationwide is as high as $1.1 Billion. Yes, that

is billion with a "B." This is a huge sum of money that could be put to legitimate reclamation needs to save lives and protect the environment.

As we look to re-authorize this program, we must find a solution to this appropriations problem and compel the Congress and Administration to live up to their commitments to return the 50% state share balances to the states where they were collected.

When the AML program was started, the vast majority of coal production was in the East where most of the reclamation work needs to be done. Over the past couple of decades, though, coal production has migrated West. Wyoming mined coal currently pays for over 40% of the AML program. Wyoming money is being used to clean up Eastern problems. Future funding of the AML program must ensure that one region of the country, and largely one state, does not pay for a disproportionate share of the reclamation work in another region from a different era.

Further, the law was amended in 1992 to use a portion of the interest earned by the AML fund to support the Combined Benefits Fund that pays for unassigned beneficiaries—retired mineworkers whose former companies are no longer in business and no longer pay for their health care premiums.

Rising prescription drug costs, lower interest rates and an increasing pool of unassigned beneficiaries are stretching the Combined Benefits Fund, or CBF, to its limits. I have always believed the CBF obligation and our debt to those workers who toiled in the mines and mills and helped power us to victory in World War II and beyond is a national responsibility, not one that should be heaped upon the shoulders of Wyoming and a limited number of other coal-producing states.

This is a national problem that requires a national solution, not one supported solely by the AML fund. Some say the art of compromise is disappearing, but I believe Ranking Member Rahall and I have found a way to adequately fund the health care benefits of these retired mine workers, and I firmly believe that H.R. 3796, the Cubin/Rahall proposal, is the way to do it.

I also strongly believe that the Cubin/Rahall proposal best achieves the varied needs of all of the AML Program states, rather than focusing on just a small handful of the problems. It is unconscionable that the Administration's proposal seeks to single out Western states and tribes, who already bear a disproportionate load of the AML fee, and asks them to forego all future contributions to the AML Fund, just for the privilege of seeking the appropriation of monies they are already authorized to receive under current law.

Bureau of Land Management (BLM) estimates released in February state that coal production in Wyoming's Powder River Basin, only one of our coal production areas in the state, is expected to increase 80 percent by the year 2020, rising to 646 million tons annually.

Assuming the report is correct, and under the 20% reduction in the AML fee used in both bills, the state of Wyoming would stand to lose upwards of $75 million per year of state share revenues currently owed. Over the 14 year re-authorization of the Administration's proposal, my constituents would be looking at a cut of over $1 Billion in state shares, for the promise of continued increase in the President's budget and future appropriated dollars of monies we can already receive under law. And yes, I again used a "B" there. It would be comical if the amounts weren't so staggering.

Just this week the House of Representatives will debate whether it is possible to pass a re-authorization of the TEA-21 bill. Could you imagine if the state of Pennsylvania, for example, was asked to donate millions or billions of dollars to the Highway Trust Fund, and receive ZERO percent back upon their payments? It simply does not pass the straight face test.

The Cubin/Rahall proposal makes great strides towards addressing the needs of all 24 states and tribes who participate in the program. The Cubin/Rahall bill has already garnered wide bipartisan support from many members in states such as West Virginia, Kentucky, Ohio, Indiana and Wyoming.

The list grows every week as folks become educated on the issue and how our bill will affect them. In fact, every single state and tribe in the AML program, all 24 of them, will receive a boost in funding under the Cubin/Rahall bill. The same cannot be said of the Administration's proposal.

We have before us today representatives of the broad stakeholder interests in the AML fund. We will hear many different perspectives and priorities about re-authorization of SMCRA, how the Cubin/Rahall and Administration proposals differ, and in what ways we can move forward in this process. I will do my best to address each of these perspectives as we move to further consensus key issues regarding re-authorization.

Finally, I have nothing but the utmost respect for my colleague Mr. Peterson, and commit to working on this issue with him until we can find an answer. We have

worked on issues just as tough as this in the past from ESA reform to passing an energy bill, and I have no doubts we'll find a solution. The AML Fund is a very complex and contentious issue, but it is an issue so important that we owe the American people a rational and common-sense solution.

I look forward to working with Mr. Rahall, Mr. Peterson, other members of the Congress, the Administration, states, tribes and all of the various stakeholders to find a solution that is good for the Nation, good for our environment and keeps our promises to the American people.

I would like to welcome John Masterson, Counsel to Governor Freudenthal of Wyoming. He does a good job for our home state, and I look forward to his testimony, and the testimony of all the witnesses.

STATEMENT OF HON. NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Madam Chair. I appreciate the fact that you are holding these hearings today, and I appreciate your leadership on this most important issue. I totally agree with you. We will call it Cubin/Rahall, or call it whatever you want to call it. I would be glad to go to the top of the dome and yell it out at any time—once we get it passed and signed into law.

The purpose of this hearing today is to consider a rather fundamental proposition, and it is whether we will keep the promise or not. It is that simple, a promise made to the coal miner.

In 1946, this was devised by the White House as a direct result of the sweat and blood of generations of coal miners, whose toil carried this Nation through war and peace, through the industrial and technological revolutions. It was a promise of cradle to grave health care that manifested itself into the 1992 Coal Act. It was a promise made to coal field citizens and communities. In 1977, again at the White House, it was devised as a result of the ravages of past abuses and on the souls of the 118 individuals who perished in 1972 at Buffalo Creek in Logan County, WV. It was a promise to reclaim their devastated landscapes, to return their land to productive uses, and to protect their health and safety that is part and parcel of the landmark Surface Mining Control and Reclamation Act.

The Abandoned Mine Reclamation program has been a success. Unlike the Superfund, this program has a track record of real, on-the-ground progress in restoring lands and eliminating health and safety threats to our coal field residents.

Since 1992, through the transfer of just the interest which accrues to the Abandoned Mine Reclamation fund to the Combined Benefit Fund, we have provided health care for tens of thousands of elderly retired coal miners whose former employers can no longer be identified. Many from southern West Virginia are in this Committee room today, in the back row.

The nexus is there. The welfare of abandoned miners and of reclaiming abandoned mines, you see, go hand in hand. To date, the promise has been kept. Yet, at the end of this year, the fees assessed on the coal industry which finances this effort expire.

In this regard, it is no secret that for many years the interests of Wyoming, the largest producer of coal, and West Virginia, with a large legacy of abandoned coal mines and retired coal miners, differed on the issue of reauthorizing the Abandoned Mine Reclamation fund.

But over the course of the past 3 years, the gentlelady from Wyoming, Barbara Cubin, and myself have engaged in dialog on these issues. We have always respected each other's views. We have worked in good faith, we are working in good faith, and we have found that on at least this matter common ground can be found between the coal fields of the Appalachian basin and those of the Powder River Basin.

I commend the gentlelady from Wyoming. As I say, she has truly operated in good faith and truly understands the issue and has been successful in brokering what I term an historic agreement here.

The result is H.R. 3796, the Cubin/Rahall bill. This legislation keeps the promise to the retired miner, to coal field citizens, and to the States and tribes. We have an old adage in the Appalachian coal fields—and president Cecil Roberts knows it very well—that dates back to 1932 and the Harlan County coal wars. And that is, "which side are you on? Which side are you on?"

I had hoped the Administration would be on our side. Yet, it chose to ignore the historic agreement that Representative Cubin has brokered and instead has launched a torpedo into a ship that already has some rough ocean to navigate.

I welcome the Administration's interest. I welcome Mr. Jarrett's testimony this morning. It's always fascinating when the Administration attempts to come forward with a pro-environment, pro-labor proposal. But in my view, it is a flawed proposal. I fear that under the Administration's proposal the program's goals will not be achieved, that through loopholes there will be a continued hemorrhaging of funds to lower priority projects. Cubin/Rahall says protecting human health and safety must come first.

In my view, the Administration's bill does not keep faith with the coal States and tribes. It appears to say that reclaiming an abandoned coal mine in Oklahoma is less important than reclaiming an abandoned coal mine in Pennsylvania. I do not accept that notion.

The fact of the matter is that the States and tribes entered into an agreement with the Federal Government premised on their receiving at a minimum a 50 percent return on their contributions to the program. Cubin/Rahall, as the gentlelady from Wyoming has said, maintains the integrity of those agreements. The Administration's plan does not.

Finally, the Administration's bill does not keep faith with the retired coal miner. It does not keep the promise. Cubin/Rahall does. Whether they reside in Salt Rock, WV or Rock Springs, WY, our bill keeps the promise to some 50,000 retired coal miners that their health care will continue uninterrupted.

The eyes of coal field communities and coal mining families, ladies and gentlemen, are upon us this day. So to this gentleman from West Virginia, enacting the principles of Cubin/Rahall are a matter of justice, a matter of human dignity and respect, and are those which I shall not flag nor fail in our efforts to achieve.

Thank you, Madam Chair.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Ranking Democrat, Committee on Resources

The purpose of this hearing is to consider a rather fundamental proposition. Will we keep the promise or not.

It is that simple.

A promise made to the coal miner. In 1946. In the White House. Devised as a direct result of the sweat and blood of generations of coal miners whose toil carried this Nation through war and peace, through the Industrial and the Technological Revolutions.

A promise of cradle-to-grave health care that manifested itself into the 1992 Coal Act.

And a promise made to coalfield citizens and communities. In 1977. Again, at the White House. Devised as a result of the ravages of past abuses, and on the souls of the 118 individuals who perished in 1972 at Buffalo Creek in Logan County, West Virginia.

A promise to reclaim their devastated landscapes, to return their land to productive uses, and to protect their health and safety that is part and parcel of the landmark Surface Mining Control and Reclamation Act.

The Abandoned Mine Reclamation Program has been a success. Unlike the Superfund, this program has a track record of real, on-the-ground progress in restoring lands and eliminating health and safety threats.

And since 1992, through the transfer of just the interest which accrues to the Abandoned Mine Reclamation Fund to the Combined Benefit Fund, we have provided health care for tens of thousands of elderly retired coal miners whose former employers can no longer be identified.

The nexus is there. The welfare of abandoned miners and of reclaiming abandoned mines, you see, go hand in hand. To date, the promise has been kept.

Yet, at the end of this year the fees assessed on the coal industry which finances this effort expire.

In this regard, it is no secret that for many years the interests of Wyoming, the largest producer of coal, and West Virginia, with a large legacy of abandoned coal mines and retired coal miners, differed on the issue of re-authorizing the Abandoned Mine Reclamation Fund.

But over the course of the past three years the gentlelady from Wyoming and myself have engaged in a dialogue on these issues. Always respectful of each other's views, working in good faith, we have found that in at least this matter common ground can be found between the coalfields of the Appalachian basin and those of the Powder River Basin.

The result: H.R. 3796, the Cubin-Rahall bill.

This legislation keeps the promise. To the retired miner, to coalfield citizens and to the States and tribes.

We have an old adage in the Appalachian coalfields, dating back to 1932 and the Harlan County Coal Wars. Which side are you on? Which side are you on?

I had hoped the Administration would be on our side. Yet, it chose to ignore the historic agreement brokered by the gentlelady from Wyoming and myself and instead launch a torpedo into a ship that already has some rough ocean to navigate.

I welcome the Administration's interest. It is always fascinating when this Administration attempts to come forward with a pro-environment, pro-labor proposal.

But in my view it is a flawed proposal.

I fear that under the Administration's bill the program's goals will not be achieved. That through loopholes there will be a continued hemorrhaging of funds to lower priority projects. Cubin-Rahall says protecting human health and safety must come first.

In my view, the Administration's bill does not keep faith with the coal States and tribes. It appears to say that reclaiming an abandoned coal mine in Oklahoma is less important than reclaiming an abandoned coal mine in Pennsylvania. I do not accept that notion.

The fact of the matter is that the States and tribes entered an agreement with the federal government premised on their receiving at a minimum a 50% return on their contributions to the program. Cubin-Rahall maintains the integrity of those agreements. The Administration does not.

And finally, the Administration's bill does not keep faith with the retired coal miner. It does not keep the promise. Cubin-Rahall does. Whether they reside in Salt Rock, West Virginia, or Rock Springs, Wyoming, it keeps the promise to some 50,000 retired coal miners that their health care will continue uninterrupted.

The eyes of coalfield communities and coal mining families, ladies and gentlemen, are upon us this day.

To this gentleman from West Virginia, enacting the principles of the Cubin-Rahall bill are a matter of justice, a matter of human dignity and respect, and are those which I shall not flag nor fail in my efforts to achieve.

Mrs. CUBIN. Thank you, Mr. Rahall.

Let me ask the gentlemen if they would like to give an opening statement. Mr. Peterson?

STATEMENT OF HON. JOHN E. PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. PETERSON. Thank you, Madam Chair. I look forward to working with you. We have worked together on many issues and have had a good friendship.

I want to thank you for holding this hearing, and I want to thank Ranking Member Rahall for his comments, though I think his characterization of my bill as a "torpedo" was a little bit of a stretch. It's not a torpedo. It's just another point of view that I think when we merge them we might come out with a perfect bill. But it will take some discussion. But a "torpedo", that's a little explosive, a little overstretching of the term, I think.

I want to thank Scott Roberts, who is also here today from Pennsylvania, who we will hear from later, and all of those witnesses who have come to help us better understand this issue.

I hope we're all aware of the major role that Pennsylvania played in the history of coal. As we will hear in the testimony this morning, the Commonwealth of Pennsylvania provided the coal that fired the boilers of trans-Atlantic steamships and the furnaces of our once great steel mills. It was Pennsylvania's coal that helped fuel the Industrial Revolution and got this country through two world wars and has made the country an industrial leader in the world today.

A majority of Pennsylvania's coal was mined before Congress passed the Surface Mining Control and Reclamation Act in 1977. The State still bears the scars of this unregulated historic production. I represent a lot of those counties. Seventeen counties in the lower half of my district was all coal country.

More than a billion dollars is still needed to clean up the 4,600 abandoned sites in Pennsylvania that are considered dangerous or environmentally harmful, and more than 1.6 million Pennsylvanians live less than a mile from a dangerous mine site. Abandoned mine lands encompass more than 189,000 acres in 44 of Pennsylvania's 67 counties, and more than 3,000 miles of stream in Pennsylvania are affected by acid mine drainage from them. This flows down the Susquehanna and into the Chesapeake, it flows down the Ohio into the Mississippi and into the Gulf, so it really adds pollution to the waters that encompass this country.

It is clear that the abandoned mines and acid mine drainage are the number one environmental issue facing Pennsylvania, and the bill I have introduced, H.R. 3778, addresses those needs while maintaining the Federal commitments made to other States in SMCRA. I am proud to say that the entire Pennsylvania delegation has signed on to my bill.

Pennsylvania is not asking for special treatment, nor are we asking to receive a single dollar more than is necessary to fix our

abandoned mine problems. However, under the current system and other proposals, Pennsylvania will continue to receive inadequate resources to address priority sites, while States that have certified completion of their abandoned mine sites simply see their outstanding share balance grow. H.R. 3778 will get the job done quicker, and about $3 billion cheaper, than other proposals.

The Commonwealth has taken great steps to reclaim our abandoned mines and to clean up our waterways over the past 50 years. I have served with five Governors, and all of them have had initiatives to clean up these sites and have always put the money on the table to more than match the Federal money that's been given them.

On top of the $600 million we have received from the Federal AML program, Pennsylvania continues to put hundreds of millions of dollars of State money on the table to fix these problems. Mr. Roberts will share that in his testimony today.

Clearly, Pennsylvania and its residents continue to do their fair share, but they need our help. All citizens of this Nation benefited from the cheap and abundant fuel we provided at a tremendous expense to Pennsylvania's environment. Our legacy of coal mining needs to be addressed so that we can properly protect the health, safety and well-being of our residents.

It reminds me of Toby Creek, a creek that runs in my district, that when I first became a State Senator was a stream that was red and there was no aquatic life in it. Through our clean-up work today, it is stocked with trout from the Fish Commission, which says that it's a stream now that is stable for fish and aquatic life. We have a number of streams like that in my district and other parts of the State who have been brought back to their normal wholeness through this program.

The point I would like to make, though, that I hope is not missed, is who pays into the fund? Do States pay into the fund, or do consumers pay into the fund? I think those who purchase the coal—because this fee is added to the price of the coal—it's really paid for by the users, in my view, that use the coal.

Now, I'm from a production State, a timber State, a coal State, and I know whenever we sell timber or coal, we make money. You know, our people go to work. We put a lot of people to work in natural resources. So the States that are producing are winners economically. But the people who really pay are the people who use the product when this kind of a tax is imposed. So I guess we could argue whose money really is it. Well, I think it's the consumers of America's money, and we really ought to be cleaning up the worst hazardous sites and bring our environment back to where it used to be.

The Commonwealth of Pennsylvania and this Nation cannot afford for the AML program not to be reauthorized before it expires. I'm looking forward to working together with Chairman Cubin and Representative Rahall and all those who are interested to bring about a program that I think serves the needs of America, not just Pennsylvania.

Thank you.

[The prepared statement of Mr. Peterson follows:]

Statement of The Honorable John Peterson, a Representative in Congress from the State of Pennsylvania

Good morning. I would like to thank Chairwoman Cubin for calling this hearing, as well as thank Deputy Secretary Scott Roberts from Pennsylvania and the rest of our witnesses for coming today to share their testimony.

We are all well aware of the major role Pennsylvania has played in the history of coal. As we will hear in testimony this morning, the Commonwealth of Pennsylvania provided the coal that fired the boilers of transatlantic steamships and the furnaces of our once great steel mills. It was Pennsylvania coal that helped fuel the industrial revolution, got this country through two world wars and has made this country an industrial leader of the world today.

A majority of Pennsylvania's coal was mined before Congress passed Surface Mine Control and Reclamation Act in 1977, and the state still bears the scars of this unregulated historic production. Abandoned mine lands encompass over 189,000 acres in 44 of Pennsylvania's 67 counties and over 3,000 miles of the commonwealth's streams are impaired by Acid Mine Drainage.

It is clear that Abandoned Mines and Acid Mine Drainage are the number one environmental issues facing Pennsylvania, and the bill I have introduced, H.R. 3778, addresses those needs while maintaining the federal commitments made to other states in SMCRA. I am proud to say that the entire Pennsylvania delegation, from Melissa Hart in Western Pennsylvania to Chaka Fatah in downtown Philadelphia has cosponsored H.R. 3778.

Pennsylvania is not asking for special treatment, nor are we asking to receive a single dollar more than is necessary to fix our Abandoned Mine problems. However, under the current system and other proposals, Pennsylvania will continue to receive inadequate resources to address priority sites while states that have certified completion of their abandoned mine sites simply see their outstanding share balance grow. H.R. 3778 will get the job done quicker and about $3 billion cheaper than other proposals.

The Commonwealth has taken great steps to reclaim our abandoned mines and to clean up our waterways over the past 50 years. On top of the $600 million we have received from the federal AML program, Pennsylvania continues to put hundreds of millions of state money on the table to fix this problem, as Mr. Roberts will share with us in his testimony.

Clearly, Pennsylvania and its residents continue to do their fare share, but they need our help. All citizens of this nation benefitted from the cheap and abundant fuel we provided at a tremendous expense to Pennsylvania's environment. Our legacy of coal mining needs to be addressed so that we can properly protect the health, safety and well-being of our residents.

The Commonwealth of Pennsylvania and this nation cannot afford for the AML program to not be reauthorized before it expires. I am looking forward to working together with Chairwoman Cubin and Representative Rahall to reauthorize this vital program in a way that is fair to all parties involved.

Thank you.

Mrs. CUBIN. Thank you. I find it interesting, though, that your opening statement didn't talk about any of the other issues other than Pennsylvania. I think that reflects quite well what the Administration's bill takes care of.

Mr. Cole, did you want to give an opening statement?

Mr. COLE. No, Madam Chair.

Mrs. CUBIN. OK.

Now it is my pleasure to introduce the first panel, Mr. Jeff Jarrett, the Director of the Office of Surface Mining from the U.S. Department of Interior.

Mr. Jarrett, I think you know the rules here. The timing lights will be on the table for a 5-minute oral presentation. Your entire statement will be entered into the record. Thank you.

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

Mr. JARRETT. Thank you, Madam Chairperson. It is a pleasure, I think, for me to be here today as well, so far anyway.

Distinguished members of the Committee, thank you for the opportunity to participate in this hearing and to discuss what we all know is a very important issue raised by the approaching expiration of the OSM's authority to collect the Abandoned Mine Land fee.

Since it was enacted by Congress in 1977, the AML program has reclaimed more than 260,000 acres of abandoned coal mine sites, hazards associated with over 2.9 million feet of dangerous highwalls, and 27,000 open mine pools and shafts have been eliminated. Thousands of citizens who live, work and recreate in America's coal fields are now safer because of the AML program.

But the job is not finished. The States and tribes estimate it will take an additional $3 billion just for construction to abate the highest priority health and safety problems associated with these sites, and nearly 3.5 million coal field citizens live within a mile of these sites. Too often, that proximity results in tragedy. And while there's no systematic national accounting of injuries or fatalities of abandoned mine sites, we know from anecdotal information provided from some States that fatalities do occur.

Pennsylvania has reported 45 fatalities in the past 30 years in the anthracite coal region alone. Oklahoma has reported 11 fatalities in the past decade. Although a comprehensive national accounting of injuries and fatalities would be powerful information, it is simply not necessary for us to know that it's imperative that we finish the job we set out to do nearly 26 years ago.

We are here today to discuss two bills, the Administration's bill introduced by Congressman Peterson, and the bill introduced by Congresswoman Cubin and Congressman Rahall. You notice that I did use Congresswoman Cubin's name first.

Mrs. CUBIN. I'm not fussy about that.

[Laughter.]

Mr. JARRETT. I want to express my sincere thanks to Congressmen Peterson, Rahall and Congresswoman Cubin, as well as several Senators who have introduced legislation on the Senate side. I think it speaks a lot on how Congress is viewing this pending expiration of the AML fee. I think it speaks a lot for those who have been engaged in this debate.

I think today is a good day for coal field citizens, because despite some disagreements that we all know we have on how we need to reform the AML program, I think we can at least stand here shoulder to shoulder and say that we all care and that we're all willing to do our best to do what is right and fair.

I think of the two bills we're here to discuss today, both of those bills obviously satisfy our primary objective of reauthorizing OSM's authority to collect the needed AML fees. Both bills recognize the inherent problem with the current formula for allocating AML resources, and both bills focus more AML funding on the most dangerous abandoned mine sites.

For the past 18 months, I and my staff have been consulting with a lot of people, Members of Congress, the coal industry, the States, looking for their opinions on what we need to accomplish with this reauthorization effort. Of course, we found significant agreement that the AML fee collection authority should be extended and that fundamental changes should be made to the structure of the program. But as we know, that's about as much as all agree on.

In the past few weeks, as our stakeholders evaluated the various pending proposals, I have had the opportunity to revisit several of them. What I have found is varying support for each bill. More importantly, what I found is a significant misunderstanding about what each bill does. So it is my sincere hope that over the next several weeks we can develop a common understanding of each proposal so we can move forward together and reauthorize the AML program in a way that makes sense and is fair to all.

We understand and respect that each of the stakeholders can and should fight for what is in their own best interest. But quite frankly, that is not a luxury that I had in developing the Administration's proposal. The problem of abandoned mine lands is a national problem that requires a national solution. We were constrained to devise that national solution in the context of the existing AML program, and with significant budget constraints.

Choices had to be made. We chose first and foremost to fulfill the promise made to coal field citizens 25 years ago by abating abandoned mine land hazards that pose a risk to human health and safety. Our solution, simply put, is to put the money where the problem is. But at the same time, we did not want to ignore the promise made under current law to States and tribes who have completed their AML abatement work, that are still owed substantial State share money. Likewise, we wanted to make sure that no State or tribe with remaining AML problems would receive less money under a new allocation formula than they currently receive under existing law.

That is why we worked so hard to include an additional $53 million in the Administration's 2005 budget request. Fourteen million dollars of that additional money will be used to supplement grants to certified States to pay off the unappropriated balance on an expedited schedule over 10 years. Thirty-nine million dollars of that additional money will be used to supplement grants to noncertified States to abate the most dangerous abandoned mine sites. So we welcome the opportunity to clarify what we intended with our proposal and to discuss with you the details of both bills today and in the weeks to come. It is our sincere hope that the bills now pending before this Committee will provide a platform for fair, open, and honest debate and resolution of significant issues and competing demands for the AML dollars.

Again, I want to thank this Committee for its leadership and its interest in this important issue. I know, Congressman Rahall, you have been among us the one I have known the longest, and I know that you have followed and worked with this program for 26 years now. I appreciate that. I also understand that you spent most of the night driving up from West Virginia to be here at this hearing

today, and I think that speaks highly of your interest in this issue. I appreciate that.

It would be my pleasure to respond to questions any of you have.

[The prepared statement of Mr. Jarrett follows:]

Statement of Jeffrey D. Jarrett, Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior

Madam Chairman and members of the Subcommittee, thank you for the opportunity to participate in this hearing and to discuss the important issues raised by the approaching expiration of the Office of Surface Mining Reclamation and Enforcement's (OSM's) authority to collect the Abandoned Mine Land (AML) fee.

In particular, I would like to thank Representative Peterson for introducing the Administration's bill, H.R. 3778. The Administration's bill seeks to reauthorize OSM's authority to collect the AML fee, set to expire on September 30, 2004, and to make positive changes to get this important program back on track.

I would also like to thank you, Madam Chairman, and Representative Rahall for introducing your bill, H.R. 3796. We look forward to working with the Congress to reach agreement on the important issues surrounding the collection and use of the AML fee.

The Administration believes that the problem of Abandoned Mine Lands is a national problem that requires a national solution.

In the years since it was enacted in 1977, the AML program has been responsible for significant reclamation of abandoned coal mine sites and for improving and protecting the lives, health and safety of Americans living in the coalfields. However, that job is not finished. Moreover, an inherent conflict in the way the AML program operates makes it unlikely that the current system is even capable of finishing the job within the lifetime of anyone living in the coalfields today.

H.R. 3778, the Administration's legislative proposal, will focus more AML funding on the areas most damaged by this nation's reliance on coal for industrial development and wartime production, long before the establishment of reclamation requirements in the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Shifting the program's resources based on historic production will allow us to spend the money where the problems exist. By distributing future fees based on need, the Administration's proposal will provide 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.

We cannot support the provisions in H.R. 3796 that call for additional funding because they are inconsistent with the Administration's budget and program priorities. Neither can we support the allocation provisions because they do not further the goal of expediting cleanup as quickly as those provisions contained in H.R. 3778. In addition, the Administration cannot support creating new mandatory spending programs or allocate funds designated for AML cleanup for other purposes.

Background

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

Even if all collected AML fees and the unappropriated balances of $1.5 billion were used, we would still have insufficient funds to address the health and safety-related coal mining problems because of the fund's current distribution formula. Moreover, under the current distribution formula, it would take an average of 47 more years to complete reclamation. As a result, dangerous sites would continue to be a threat to life and health for almost another half-century. In some cases, remediation would take nearly a century.

The current allocation system makes it impossible to complete the job of reclamation in the way that Congress intended. The September 30th expiration of the current AML fee collection authority is our opportunity to reform that authority and the distribution formula, and put it on track to finish the job of reclaiming abandoned coal mine problems.

SMCRA's Fee Allocation Problem

SMCRA requires that all money collected from tonnage fees assessed against industry on current coal production ($0.35/surface mined ton; $0.15/deep mined ton; and $0.10/lignite) be deposited into one of several accounts established within the AML fund. Fifty percent (50%) of the fee income generated from current coal production in any one state is allocated to an account established for that state. Likewise, 50% of the fee income generated from current coal production on Indian lands is allocated to a separate account established for the tribe having jurisdiction over such Indian lands. The funds in these state or tribal share accounts can only be used to provide AML grant money to the state or tribe for which the account is established.

Twenty percent (20%) of the total fee income is allocated to the "Historic Production Account." Each state or tribe is entitled to a percentage of the annual expenditure from this account in an amount equal to its percentage of the nation's total historic coal production—that is, coal produced prior to 1977. As is the case with state or tribal share money, each state or tribe must follow the priorities established in SMCRA in making spending decisions using money from the historic production account. However, unlike the allocation of state or tribal share money, once the state or tribe certifies that all abandoned coal mine 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 reclamation program, the Clean Streams Program, the fee compliance program, and overall program administrative costs.

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

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

The Administration has proposed legislation that accomplishes four primary objectives:

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

These objectives recognize the need to strike a balance that addresses both the ongoing problems faced by states with high priority coal-related health and safety issues while not placing those states where the majority of fees are currently generated at a disadvantage.

Bill Analysis

A. Changes to the Allocation Formula

H.R. 3778 would change the current statutory allocation of fee collection which is progressively directing funds away from the most serious coal-related problem sites. All future AML fee collections, plus the existing unappropriated balance in the RAMP account, will be directed into a new single account. Grants to noncertified

states or tribes (those states and tribes that still have unreclaimed coal problems) will be distributed from that single account based upon historic production, which is directly related to the magnitude of the AML problems. As a result of these modifications, H.R. 3778 completes the reclamation of the highest priority work while avoiding $3.2 billion in collections that would have been necessary under current law to achieve the same result. At the same time, H.R. 3778 will remove more people at risk from the dangers of health and safety coal sites (142,000 per year or an increase of 87%).

H.R. 3778 provides that no noncertified state or tribe could receive an annual allocation that would exceed 25 percent of the total amount appropriated for those grants each year. This provision would ensure that no one State receives too high a percentage of the grants in any one year. Any State whose allocation would otherwise exceed this cap would recoup the difference in the program's latter years as other States and tribes complete their high-priority coal-related projects and are no longer eligible for future grants.

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

In contrast to the Administration's proposal, H.R. 3796 would spend approximately $750 million more by continuing to allocate 50% of the fees collected to state or tribal share accounts regardless of whether the state or tribe has any unreclaimed high priority coal-related AML problems. In addition, if a certified state has public domain lands available for leasing, H.R. 3796 would amend current law to transfer revenues generated by the Mineral Leasing Act that currently go to the Treasury, in amount equal to the existing unappropriated balance of that state's State-share account. An amount equivalent to the amount provided to the state from Mineral Leasing Act revenues would then be debited from that state's State-share account and reassigned to the historic production. As a result, certified states and tribes with leasable public domain lands would receive their current unappropriated State-share balance as well as an amount equivalent to their 50% State-share distribution going forward. These mandatory payments of approximately $1 billion over ten years would neither be subject to Congressional appropriation nor contribute to our broader objective of AML reform.

B. Elimination of AML funding for the RAMP Program

H.R. 3778 amends SMCRA to remove the existing authorization of expenditures from the AML fund for the Rural Abandoned Mine Program (RAMP) under the jurisdiction of the Secretary of Agriculture. No funds have been appropriated for this program, which reclaimed lower priority abandoned mine land (AML) sites, since FY 1995. Elimination of this authorization would facilitate the redirection of AML fund expenditures to high-priority sites. Accumulated unappropriated balances in the RAMP account would be made available for reclamation of high-priority coal-related sites.

H.R. 3796 also endorses eliminating future allocations to the RAMP fund. However, it would reassign those funds to offsetting any deficit in the net assets of the United Mine Workers of America Combined Benefit Fund, rather than making those funds available for its intended purpose of AML reclamation.

C. AML Reclamation Fee Rates

H.R. 3778 extends reclamation fee collection for 14 years and modifies reclamation fee rates in an effort to closely match anticipated appropriations from the AML fund with anticipated revenues during that time. The proposed changes would maintain the current fee structure while uniformly reducing the fee rates by 15 percent for the five years beginning with FY 2005, 20 percent for the next five years, and 25 percent for the remaining years through September 30, 2018. Those rates are

based on an analysis of coal production trends and the resultant impacts on reclamation fee receipts. The Administration's proposed uniform graduated fee reductions make the program revenue neutral and possibly have the added benefit of resulting in lower costs to consumers. The new expiration date reflects the time required to collect revenues sufficient to reclaim all outstanding currently inventoried coal-related health and safety problem sites within 25 years. Finally, existing language requiring the Secretary to establish a new fee rate after September 30, 2004, based on CBF transfer requirements would be removed.

H.R. 3796 proposes to extend the fee collection authority for 15 years to 2019. H.R. 3796 also proposes to lower the reclamation fee rates by 7 cents per ton for surface-mined coal, 3 cents per ton for underground-mined coal, and 2 cents per ton for lignite. This is a reduction overall of 20 percent. However, since reclamation would take significantly longer than under H.R. 3778, fee collection authority would need to be reauthorized again to raise sufficient revenue to eliminate the AML inventory.

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

In the Energy Policy Act of 1992, Congress established the United Mine Workers of America Combined Benefit Fund (CBF). The CBF provides health care and death benefits to certain retired union coal miners and their dependents and survivors. Approximately 40,000 of the CBF's beneficiaries have been "assigned" to responsible mining companies. These companies pay a yearly premium into the CBF on behalf of each of their assigned beneficiaries. However, approximately 17,000 additional beneficiaries cannot be assigned to any company because neither the original employer nor any other responsible company remains in existence.

Under the law creating the CBF, premiums for unassigned beneficiaries are to be assessed equally against all of the companies participating in the CBF. To reduce the financial burden on the industry, however, Congress mandated the transfer of interest earned on the AML fund to the CBF to defray the cost of health care benefits for these unassigned beneficiaries. Historically, these interest transfers have met nearly all of the CBF's unassigned beneficiary premiums. It is our understanding that, until recently, no mining companies have had to pay unassigned beneficiary premiums since the CBF was created.

The transfer provision in SMCRA has been interpreted to permit a yearly transfer from the AML Fund to the CBF of up to, but not more than, $70 million per year. H.R. 3778 amends SMCRA by adding a new provision that governs transfers from the fund to the CBF for health benefits for unassigned beneficiaries. The Administration's bill would replace and improve upon the existing provisions in SMCRA by removing the $70 million per year cap, and by making interest credited to the account in prior years available. These measures would protect the integrity of the AML fund while providing additional monies to meet CBF needs for unassigned beneficiaries.

H.R. 3796 would require transfer of all interest projected to be "earned and paid to the Combined Fund" each fiscal year. We believe that the authors meant to refer to interest earned and paid to the AML fund, not the Combined Fund. If so, H.R. 3796 would remove the $70 million cap on annual transfers. It also would expand the allowable uses of the transfers to include payment of any deficit in the net assets of the CBF, not just expenditures for health care benefits for unassigned beneficiaries. Both the stranded interest and the unappropriated balance of the Rural Abandoned Mine Program (RAMP) allocation (currently approximately $302 million) would be available for transfer to the CBF in FY 2004 and future years. This transfer language appears to strike the provision in existing law that limits transfers to the amount needed to cover specific CBF expenditures. H.R. 3796 seemingly requires the transfer of all interest and other available funds without limitation.

E. Minimum Program Funding

H.R. 3778 provides that no State or tribe with high-priority problem sites would receive an annual allocation of less than $2 million. This provision would ensure that States and tribes will receive an amount conducive to the operation of a viable reclamation program.

H.R. 3796 requires a minimum annual grant of $2 million for all states and tribes regardless of their certification status. Any shortfalls in appropriations for this purpose are to be made up from the Federal share account. It also adds Tennessee as a minimum state, without regard to the existing SMCRA requirement for a state to maintain an active regulatory (Title V) program before it is entitled to receive AML grants.

F. Remining

Both bills extend the remining incentives existing in current law, which provide reduced revegetation responsibility periods for remining operations and an exemption from the permit block sanction for violations resulting from an unanticipated event or condition on lands eligible for remining. H.R. 3778 makes these incentives permanent by removing the expiration date while H.R. 3796 extends the expiration date to 2019. Additionally, H.R. 3778 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. H.R. 3796 does not provide for the creation of additional remining incentives.

G. AML Reclamation Priority

H.R. 3778 preserves the autonomy of the states and tribes by maintaining the current priority structure and requires that expenditures from the AML fund on eligible lands and water for coal-related sites reflect the listed priorities in the order stated. H.R. 3778 focuses on collecting enough money to provide each state or tribe with sufficient funds to complete its highest priority AML sites. The Administration's bill will accomplish these objectives by providing funds for all States and tribes to finish in less time than under a continuation of the current program: on average 22 years sooner, but in many cases, decades sooner.

H.R. 3796 amends the priority system to eliminate the general welfare component of priorities 1 and 2, leaving public health and safety as the only elements of those priorities. H.R. 3796 also requires that Priority 3 work be undertaken only in conjunction with a Priority 1 or 2 project; eliminates Priority 4 (public facilities); and eliminates Priority 5 (development of publicly owned land). Finally, for State- share and historic production grants to noncertified States, H.R. 3796 requires strict adherence to the revised priority rankings.

Both H.R. 3778 and H.R. 3796 remove the existing 30 percent cap on the amount of a State's allocation that may be used for replacement of water supplies adversely affected by past coal mining practices. This change is consistent with our goal of focusing fund expenditures on high-priority problems. The lack of potable water is one of the most serious problems resulting from past coal mining practices, particularly in Appalachia.

H. Emergency Reclamation Program

H.R. 3778 proposes amending the emergency reclamation program for abandoned mine land problems that present a danger too great to delay reclamation until funds are available under the standard grant application and award process. H.R. 3778 would revise this section by authorizing the Secretary to adopt regulations requiring States to assume responsibility for the emergency reclamation program. This change would promote efficiency and eliminate a redundancy in that potential emergencies would be investigated only by the State, not by both the OSM and the State, as occurs under the current program.

H.R. 3796 does not alter the existing emergency reclamation program structure.

I. Reclamation Set-Aside Programs

H.R. 3778 revises future reclamation set-aside program provisions to specify that expenditures from funds set aside under this program may not begin until the State or tribe is no longer eligible to receive an allocation from AML grant appropriations under SMCRA. The revised date in the Administration's proposal is more consistent with the purpose of this set-aside, which is to provide States and tribes with a source of funding to address abandoned mine land problems that remain or arise after funds are no longer available under SMCRA.

H.R. 3796 removes the authorization for this set-aside.

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

J. Completion of Coal Reclamation—Certification

H.R. 3778 establishes the conditions under which a State or tribe may certify that it has completed all coal-related reclamation of eligible lands and waters. Under the existing provisions, the State or tribe would then be eligible to spend its State share allocation on sites impacted by mining for minerals other than coal. The draft bill would amend this section by revising SMCRA to clarify that certification means that all coal-related high-priority health, safety and environment reclamation has been achieved. This subsection previously did not specify which priorities must have been

met. H.R. 3778 also allows the Secretary to make the certification for a State or tribe in which all coal-related reclamation work has been completed.

We are aware of recent information regarding the current status of coal reclamation in Wyoming. I have asked my office to review this information and to report back to me so that we can determine what effect, if any, this may have on the reauthorization proposals.

H.R. 3796 maintains current certification procedures.

K. Black Lung Excise Tax Collection and Auditing

H.R. 3778 authorizes the expenditures for collection and audit of the black lung excise tax. This revision would synchronize collections and allow OSM auditors to conduct audits of black lung excise tax payments at the same time as they audit payment of reclamation fees under SMCRA. It would promote governmental efficiency, eliminate redundancies, and reduce the reporting and record keeping burden on industry.

H.R. 3796 does not contain a similar provision.

Conclusion

The problems posed by mine sites that were either abandoned or inadequately reclaimed prior to the enactment of SMCRA do not lend themselves to easy, overnight solutions. To the contrary, these long-standing health and safety problems require legislation that strikes a balance by providing States and tribes with the funds needed to complete reclamation, while fulfilling the funding commitments made to States and tribes under SMCRA. This is the inherent tension that currently exists in SMCRA. We look forward to an open and a productive debate to amend and reform OSM's fee collection authority to fulfill the mandate of SMCRA to address these high-priority healthy and safety concerns in a manner that directs the funds to the States and tribes where they are needed. As noted earlier, the current fee collection authority is scheduled to expire in just over six months, on September 30, 2004. There is much work to be done to ensure that reforming the AML fee collection authority, allocation formula, and other needed reforms become a reality. We believe that H.R. 3778 addresses these problems in a manner that is fair to all States and supports the Administration's budget and program priorities.

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

Mrs. CUBIN. Thank you, Mr. Jarrett.

I want to start off by clearing up one thing. The first thing I want to bring up is, wasn't it about a year ago, a little over a year ago, that you came to my hideaway and we went over the white paper that you had written, and I let you know that that would in no way be suitable to me or other Members?

Mr. JARRETT. That's correct.

Mrs. CUBIN. You talk about wanting to compromise and get something done, but isn't that white paper virtually identical to the bill that you have produced for the Administration?

Mr. JARRETT. With respect to the allocation formula, that is correct.

Mrs. CUBIN. So how can you talk to me about compromising when you didn't even call me and let me know, or call Mr. Rahall, or let anyone know, that that bill was going to be put in the President's budget? I mean, that doesn't speak of compromise to me. Does it to you?

Mr. JARRETT. We actually did meet with your staff prior to introducing that bill. But quite frankly, the dilemma that we had—and we really talked to a lot of people. It was our original hope and plan to work with the States, to try to make sure all of the States—

Mrs. CUBIN. It was your original hope and plan, but it wasn't, in fact, what you did.

Mr. JARRETT. That's correct.

Mrs. CUBIN. Thank you.

And then, I have to take exception with another remark you made, about how hard you worked to get the $53 million in the President's budget. Isn't it true that Senator Thomas and I, during the energy bill discussion over on the Senate side, extracted an agreement from the Administration in writing, that they would pay Wyoming its over $400 million share?

Mr. JARRETT. I'm not—

Mrs. CUBIN. Let me tell you that it is true.

Mr. JARRETT. OK.

Mrs. CUBIN. You know, I'm sitting here wondering what kind of luck we are going to have. I would really hope that you would try to compromise with us more, that you would work with us, rather than "boom, this is my way", because that's the way I see the negotiations that have taken place between you and me so far.

Now, I want to ask you a question, if this statement is wrong, that for the privilege of paying over the term of your bill—Wyoming has the privilege of paying over a billion dollars under your bill, and what we receive for having done that is we might or might not be able to collect the $425 million that we're owed now. Is that wrong?

Mr. JARRETT. That is not wrong.

Mrs. CUBIN. So what is the rationale then for that proposal?

Mr. JARRETT. The AML program, over the past couple of years, I think, based on many discussions that I had, was pretty widely criticized as a program that simply is not getting the job done. So our proposal came after we evaluated what it was about the program that was not allowing us to get the job done.

Again, we focused on what we believe the primary purpose of the AML program is, and that is to reclaim abandoned coal mine sites on a priority basis.

Mrs. CUBIN. But you didn't take into consideration any of the changes that have, in fact, taken place over—if you want to call it the demographics—over the last 25 years.

Your testimony states that the Administration cannot support mandatory spending or allocations. So does that mean that you don't support our bill's mandatory grants to minimum program States?

Mr. JARRETT. That is what that means.

Mrs. CUBIN. Since you appear to be expanding your mission to include taxation, does OSM or the Department of the Interior provide any oversight or audits of the Combined Benefits Fund?

Mr. JARRETT. The Combined Benefits Fund is audited by the audit firm of KPMG. Those audits are provided to us. In addition, the Office of Inspector General did an audit of the CBF some years ago.

Mrs. CUBIN. What interest rate is the AML fund earning?

Mr. JARRETT. Currently, the fund is earning, I believe, about 4.17 percent.

Mrs. CUBIN. Is there any way to increase that interest earned on the fund, and what are the investments that you're making that produce that interest?

Mr. JARRETT. The statute requires that investments be made in government securities. Over the course of the past year and a half, we have worked with the stakeholders, the Department of Treasury, as well as the managers of the Combined Benefits Fund, to restructure those investments. So of the total balance in the fund, about $1.3 billion is now invested in 10-year government securities.

Prior to that, the fund was making less than 1 percent.

Mrs. CUBIN. So how long has it been making 4.5 percent? Because that was the figure that I knew, less than 1 percent.

Mr. JARRETT. Again, we started reinvesting the unappropriated fund balance over the course of the past year, and we've obviously dollar averaged that a little. So on a quarterly basis, as existing investments matured, we reinvested those dollars into longer term funds. All of that has happened over the course of the past year.

Mrs. CUBIN. My time is up. But I do want to ask of you that you deal with the negotiations that need to take place in a more and open way than you have in the past. I certainly will do the same.

Mr. JARRETT. We appreciate the opportunity to work with you.

Mrs. CUBIN. Mr. Rahall.

Mr. RAHALL. Thank you, Madam Chair.

I appreciate your testimony, Mr. Jarrett. You know, you have a tough job.

Mr. JARRETT. You say that every time we meet. I'm starting to believe it.

[Laughter.]

Mr. RAHALL. As you mentioned in your testimony, I am probably the only member of this Congress that was around in 1977 and sat on the Conference Committee. The late, great Mo Udall appointed me as a freshman Member of Congress at that time to serve on the Conference Committee that wrote SMCRA. I have seen a lot of OSM Directors come and go and testify before this Committee. But you really have a tough job. Let me just say that at the beginning.

One of your predecessors, a gentleman by the name of Bob Durham, former OSM Director, advanced a policy which I believe corrupted the AML project priority ranking system. You may have heard in my opening testimony one of my attacks against the Administration's proposal was the loophole that allows some of the money to get to lower priority projects, in my opinion. Under that corruption, what were formerly Priority 3 projects could be deemed to be Priority 2 projects, under the guise of protecting the general welfare. Only one State took advantage of that loophole.

My question is, what is your opinion of that policy change and do you support it?

Mr. JARRETT. Congressman, we actually looked at that issue. You are correct. The State of Pennsylvania added $3.8 billion to the Priority 2 inventory sites that had previously been Priority 3 sites.

I would make a couple of points about that. Number one, when we provided some analysis on the Cubin/Rahall proposal, as well as the Administration's proposal, we did not take into account the Priority 2 general welfare sites that are on the inventory. So we discounted those when we looked at how much money do we really need to collect to get that job done.

Furthermore, it is our understanding and belief that no money in Pennsylvania has actually been spent on any of those Priority 2

general welfare problems. To me, that signals that even Pennsylvania recognizes that, whether they call them Priority 3's or Priority 2's, they are less important than the health and safety Priority 1's and Priority 2's.

So while I would not think it would be appropriate to remove them from the inventory altogether, I don't have any problem with downgrading them once again to a Priority 3. I don't see any problem—

Mr. RAHALL. You don't consider that as somehow not keeping faith with the original intent of SMCRA?

Mr. JARRETT. I think the original intent of SMCRA was to reclaim all of the sites on a priority basis. To me, Priority 1 and Priority 2 health and safety problems are more important than even the most serious environmental problem.

Mr. RAHALL. Let me go to another area that I understand you have a great deal of fascination with, and that's the area of remining.

For the record, I think it should be noted that every single remining incentive in Federal law today has my name on it.

Mr. JARRETT. I understand that. We always appreciated it when I was with the States.

Mr. RAHALL. Well, on every remining provision I have sponsored, the EPA even has a section that I understand it calls the "Rahall Remining Permits".

Mr. JARRETT. That's correct.

Mr. RAHALL. With that said, I simply cannot understand the provision in the Administration's proposal that would have coal operators, through the AML fees they pay, finance their competition by allowing AML funds to be used to subsidize the costs of bonding in a remining operation.

I would like to ask you if you think it's a good idea, or could you explain why you think it's a good idea for Wyoming and West Virginia coal producers to not only pay to reclaim abandoned coal mines, but also to pay other companies to mine coal in remining areas?

Let me say also, that I understand of the some 328 remining permits, Rahall remining permits, over 300 have been done in the State of Pennsylvania.

Mr. JARRETT. That's correct.

We started looking at a lot of different ideas of how we could use AML dollars to leverage reclamation through remining. Bonding was one of the ideas that we considered. At the end of the day, however, rather than put that provision right in the Administration's proposal, we opted to put in the proposal a provision that would allow the Secretary to develop regulations to develop those types of incentives.

The reason for that, quite frankly, is we thought we needed to work with the States because the bottom line was most of those provisions would be financed by the States, through the States AML program, that we needed to work with each of those States to better evaluate and determine under which circumstances AML dollars, for example, could be used to support bonding assistance to encourage operators to get remining done.

So I guess the short of what I'm telling you is that we don't have all of the answers. That's the reason our proposal simply gives us the authority to do some outreach and develop regulations to get that job done.

Overall, we have a lot of great remining incentives, thanks to you—I agree with that statement—in place right now that are hugely successful in those States who aggressively and responsibly pursue those. But we still believe that we have some gaps where we could get a lot more AML reclamation completed at a much lower cost if we can come up with the proper ways to leverage AML dollars.

I can give you a great example that goes back to my Pennsylvania days. We had a site that was several hundred acres. It had serious acid mine drainage throughout the site. An operator wanted to remine that particular site, but the only way under Pennsylvania's regulatory program that could occur is through what Pennsylvania at that time called the alkaline addition policy. That meant the operator would have to pay to bring in, as a best management practice, a lot of alkaline material so that the mining operation would not result in more acid mine drainage. The cost of bringing that alkaline material in simply put the economics beyond the operator's reach.

What we would like to have been able to do is spend a little bit of AML dollars to purchase materials for that site, and then let the operator do the remining, do the reclamation, and we could have cleaned up a multimillion dollar site for literally pennies on the dollar. The problem was we simply didn't have the ability to use AML dollars and there were no other dollars available. So there are those types of incentives that we are looking for to encourage reclamation through remining.

Mr. RAHALL. Thank you.

Thank you, Madam Chair.

Mrs. CUBIN. Where are you from, Mr. Jarrett?

Mr. JARRETT. I'm from West Virginia.

Mrs. CUBIN. You resided awhile in Pennsylvania?

Mr. JARRETT. I resided in Pennsylvania from 1987 until 2 years ago.

Mrs. CUBIN. Thank you.

Mr. Peterson.

Mr. PETERSON. Thank you, Madam Chairman.

I guess I still have high hopes. I don't have the history on this issue of all that has gone on in the past, so hopefully, maybe I can bring a perspective where all things are negotiable until we come to a solution, because I don't have the scars, I guess, that have been felt about this issue.

But I would like to ask, Mr. Jarrett, you said 3.5 million people live near dangerous sites?

Mr. JARRETT. Yes.

Mr. PETERSON. And 1.6 million of them are in Pennsylvania. Well, I think the gravity of the Pennsylvania problem is that that's 46 percent of them. That shows you that Pennsylvania is the State with the dangerous sites and the sites that are causing great pollution, not only to Pennsylvania but to the Mississippi River and the

Chesapeake Bay. So the Pennsylvania problem is a problem that's a national problem. The Nation benefited from our coal.

The Chairman said that I spoke of Pennsylvania. Well, that's what I represent. That's what I understand the most. I'm hear to learn about the rest of the States and their issues. But I do bring the Pennsylvania perspective because I've worked with three or four Governors on this issue. So it's an issue that we have not made progress on as quickly as we had hoped. Every Governor, from Thornburg to Casey, to Ridge, to Rendell, have had this on their agenda, because it's the scars that our State is covered with.

Each Administration I think has tried to put up significant State dollars to match the Federal dollars. In fact, most times we were kind of always waiting for the Federal dollars because Pennsylvania was poised and ready—and I think Scott Roberts will tell us that today when he speaks. I'm not speaking for him.

Isn't the greatest scar in the country left from coal mining in Pennsylvania?

Mr. JARRETT. That is correct. We estimate about 34 percent of all of the abandoned mine land problems are in Pennsylvania.

Mr. PETERSON. But 46 percent of the people that live near Pennsylvania, which is even a larger percentage, both of those percentages I think are pretty significant when you think of all the States that are involved here.

I want to thank you for your work. If I were drafting the bill, I might have done it a little differently, personally. But that's what the process is about. I think that hopefully this process can allow us to negotiate in good faith. I just hope that's the case. When I disagree with the Administration on something, I will be siding with others. But I think there has to be room here where we can find a solution, because it's so important that we accomplish it. I hope we can get by the States, because it's a country problem. It's a U.S. problem. And again I say, the consumers pay this tax, who use the coal, and they're from all over the country.

Though I do think States should forever receive some benefit, that's one part of the bill I would have written differently. I don't think we should have a limit of when States could—So I think there's lots of room for compromise, but I hope we can get past the history and get on to a meaningful compromise. I would hope the Administration would come to the table with that approach. Let's somehow get this done.

Mrs. CUBIN. Thank you, Mr. Peterson.

I would like to respond that I would submit that the coal that's being produced today is benefiting the whole Nation, especially when you consider the price of gas. You know, I don't really think it's right to say there was a greater contribution later, but I do accept that there are more sites in Pennsylvania that need to be taken care of. I just think this bill is slanted so far toward Pennsylvania and away from the other producers.

Mr. PETERSON. Would the gentlelady yield?

Mrs. CUBIN. Certainly.

Mr. PETERSON. I would like to, at some point in time, if our schedule permits, I would like to have you see some of the sites, a quick flyover. We could fly up and back real quick. I know Secretary Norton, when she was there, she was shocked at what she

saw, at what is there. The southern part of Pennsylvania was decimated. Unfortunately, all those waste coal piles and the way it was done, under no laws, no regulations, the citizens of Pennsylvania and the country, the waterways of the country, are paying the price for it because it goes right into the Chesapeake.

I guess the wonderful part is I have seen in my district two major streams, Toby Creek and—I can't think of the other one—that have had such a wonderful transformation. It was remining, thank you, Congressman Rahall. Remining was part of those contracts. But the transformation in the environment and the land, cleaning those sites up has been wonderful. They have become a part of beautiful wild Pennsylvania in a few years.

But we have a lot of work yet to do there, and we just hope that we can come out with a compromise that everybody does well with. We want to work with you toward that end.

Mrs. CUBIN. Thank you very much.

Thank you,.Mr. Jarrett. The panel may have more questions that they will send to you in writing, and the record will be held open for 10 days for those responses.

Mr. JARRETT. Thank you.

Mrs. CUBIN. Thank you.

Now I would like to call the second panel, J. Scott Roberts, the Deputy Secretary of the Office of Mineral Resources Management from the Pennsylvania Department of Environmental Protection; John Masterson, Counsel to the Governor for the State of Wyoming; Steve Hohmann, Director of the Division of Abandoned Mine Lands, Kentucky Department for National Resources; and William Michael Sharp, Assistant Director, AML Programs, Oklahoma Conservation Commission. That's it.

Mr. RAHALL. Madam Chair, while the panel is taking its seat, I would like to ask permission of the Chair and members of the Committee if I might recognize those retired coal miners that are with us at this hearing today from across the coal fields. I would like to call their names and have them stand up to be recognized by my colleagues and all of us in this room and all of us in this Nation who have benefited from their hard work and toil over so many decades.

Mr. Robert Wade, Mr. Francis Martin, Mr. Jim Wills, Mr. Bobby Hicks, Mr. Paul Deardon, Mr. Charles Petri, Mr. Jimmy Austin, Mr. Kenny Lively, Mr. Sam Gregory, Mr. Bill Baily, Mr. Jerry Kerns, Mr. Jason Hawk, Mr. Mark March, and Mr. Bryan Lacy. Have I missed anybody?

We salute each of you.

[Applause.]

Mrs. CUBIN. Thank you, Mr. Rahall. I, too, welcome you here. Actually, I'm very gratified that you came. I know you had to take the time and probably drive up here. We do appreciate that, because this is an issue that affects the whole country and it needs to have a solution for the whole country. Thank you.

Now I will start by recognizing J. Scott Roberts, who I already introduced as the Deputy Secretary for the Office of Mineral Resources Management.

STATEMENT OF J. SCOTT ROBERTS, DEPUTY SECRETARY FOR MINERAL RESOURCES MANAGEMENT, DEPARTMENT OF ENVIRONMENTAL PROTECTION, COMMONWEALTH OF PENNSYLVANIA

Mr. J. SCOTT ROBERTS. Thank you very much.

As you said, my name is J. Scott Roberts, and I am Deputy Secretary of Mineral Resource Management for Pennsylvania's Department of Environmental Protection.

I am speaking today on behalf of Governor Edward G. Rendell, and the Governor wishes to thank this Committee for providing the Commonwealth its opportunity to advocate passage of H.R. 3778 and present its views on the reauthorization of the Surface Mine Control and Reclamation Act's fee that supports abandoned mine reclamation.

No other State has as much at stake in this debate as Pennsylvania. In enacting SMCRA, Congress found that prior to 1977 coal mining operations "result in the disturbance of surface areas that burden and adversely affect commerce and the public welfare by destroying the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes." It is in the Commonwealth of Pennsylvania where those effects on commerce and public welfare are most greatly felt.

Our motivation to engage in this debate is not greedy desire, nor are we before you as beggars. As Congressman Peterson mentioned, in Pennsylvania we have a 50-year legacy of taking action to deal with our AML problems.

In 1968, the Commonwealth of Pennsylvania issued a $200 million bond issue, called Operation Scarlift. In 1999, we authorized $500 million of our taxpayers' dollars to be applied, in part, to abandoned mine reclamation through the Growing Greener program. Today, Governor Rendell is pushing for another bond issue, called Growing Greener II, to be placed on the ballot in our November elections. If the voters agree, that will put another $180 million of our money toward AML reclamation in the State.

With these funds, and the nearly $600 million the State has received under grants from SMCRA, funded with the AML fees, much has been accomplished. But much remains to be done. The job is simply not finished.

The National Abandoned Mine Land Inventory lists for Pennsylvania over one billion of Priority 1 and 2 nongeneral welfare work. These dollar figures are for construction alone. The do not account for administrative nor design-development expenses, and to the best of my knowledge, were not adjusted for inflation. Using that one billion dollar inventory amount and present State grant levels, simple arithmetic suggests it will take 40 years to do that Priority 1 and 2 nongeneral welfare work.

There are several bills before this Committee and several bills before the Senate. Governor Rendell and Pennsylvania are solidly supporting H.R. 3778, introduced by Congressman Peterson, and cosponsored by our congressional delegation. It is a companion bill to S. 2049, introduced in the Senate by Senator Specter and cosponsored by Pennsylvania Senator Santorum. This bill has the support of the Bush Administration and was presented earlier today by OSM Director Jarrett.

I would direct your attention to the fact that Governor Rendell, a Democrat, stood shoulder-to-shoulder with Interior Secretary Gale Norton when Congressman Peterson announced this bill as testimony to the bipartisan support the bill has in Pennsylvania.

The issues surrounding reauthorization are complicated and their solutions will be complex. I believe the three toughest are distribution of collected fees, transfers to the United Mine Workers health care plans, and handling the unappropriated State share balances accrued under existing law.

Pennsylvania prefers a future distribution of collected funds that maximizes completion of Priority 1 and 2 AML sites. We believe H.R. 3778 accomplishes this by replacing the present State share/Federal share system with allocations based upon a given State percentage of pre-SMCRA coal production. This approach directs the resources most efficiently to the problems.

H.R. 3778 also offers a responsible balance between reclaiming abandoned mine lands and fulfilling Federal promises made to retired mine workers. But it represents a compromise and not a perfect solution. I fully recognize that the proposal does not commit to providing for the full cost of the Combined Benefits Fund, nor does it include Reach-Back or Super Reach-Back categories of retirees, nor does it provide relief for those coal companies struggling with contractual obligations left them by now defunct companies. These are serious issues that, if Federal commitments were made, then they are issues that America needs to live to and Pennsylvania supports finding solutions to those.

Pennsylvania also strongly believes the Government, regardless of its level, needs to meet its other commitments. We support the payment of fees collected and allocated to the various States under the present law but never appropriated. To the extent that those States are certified as having completed their AML work, they should have the freedom to choose what to do with those monies.

H.R. 3778 also contains provisions aimed to reduce costs, eliminate paperwork, and encourage others to do the reclamation work at no or reduce costs. It eliminates the lien requirements that carry significant manpower costs but offer little benefit. It provides that some of the fees collected can be used to bond sites that were previously affected, and it allows the promulgation of regulations to create other incentives to maximize bang for the buck and create levers.

Sustainable development is a modern day buzz word for a concept that Congress used in 1977 when they passed SMCRA. In a mining context, it means that mined land is reclaimed to allow other resource potentials, and that communities are left with the ability to transition to other economies. To its credit—and this point is ignored by critics—America's coal mining industry has embraced this concept. However, for Pennsylvania, the bait before us today is ever giving our coal communities a level playing field as they compete for economic opportunities in a world after coal. AML does adversely effect our commerce and public welfare. Our citizens have invested their own timer and money. They have reaped benefits of the present program. And while the job is completed in some States, close to being completed in others, under the current allocation—

Mrs. CUBIN. Are you just about finished?

Mr. J. SCOTT ROBERTS. I'm sorry.

Mrs. CUBIN. That's OK. Go ahead and conclude.

Mr. J. SCOTT ROBERTS. In closing, by passing H.R. 3778, Congress can help get the job done in years, not generations.

Thank you. I'm sorry for going over.

[The prepared statement of J. Scott Roberts follows:]

Statement of J. Scott Roberts, Deputy Secretary for Mineral Resources Management, Department of Environmental Protection, Commonwealth of Pennsylvania

My name is Jay Scott Roberts and I am Deputy Secretary of Mineral Resource Management for Pennsylvania's Department of Environmental Protection. I am speaking today on behalf of Pennsylvania Governor Edward G. Rendell. The Governor wishes to thank the Committee for providing the Commonwealth the opportunity to present its views on the reauthorization of the Surface Mine Control and Reclamations Act's (SMCRA) fee that supports abandoned mine land (AML) reclamation.

Sustainable Development is a modern day buzzword for a concept that Congress used in passing SMCRA in 1977. In a mining context, Sustainable Development can mean that mine land is reclaimed to allow other resource potentials of the area. It also means that communities, which prospered while supporting the mineral economy, are left with the ability to transition to other economies.

Before 1977 Sustainable Development was a foreign concept to the nation's mining industry. That fact is reflected in Congress' finding that the surface mine operations of the time, and presumably before, "result in disturbance of surface areas that burden and adversely affect commerce and the public welfare by destroying the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes" [30 U.S.C. 1201, Sec 101(c)] and "coal mining operations affect interstate commerce" [30 U.S.C. 1201, Sec 101(j)].

To its credit, and this is a point ignored by critics, America's coal mining industry has embraced the concept of sustainable development. When a modern mine is completed the land is ready for new uses and the community has the opportunity to transition into new economies.

But pre-1977 miners had no such forward vision. Congress also recognized this by finding, again in 1977, that "there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality" [30 U.S.C. 1201, Sec 101(h)].

Pennsylvania was blessed with abundant natural wealth—endless forests, good soils, plenty of clean water, and minerals. Chief among those minerals was coal. Although having only the 9th largest original reserves of any state in the nation (but Pennsylvania accounted for 95% of the world's known anthracite reserves), Pennsylvania's coal was the basis for much of the nation's historic production. Pennsylvania anthracite fired the boilers of transatlantic steamships and Pennsylvania bituminous fired the blast furnaces of Carnegie's steel mills. The production of Pennsylvania's mines was staggering. In 1917 the production of Anthracite coal, found in only 5 of our 67 counties, peaked at 117,000,000 tons. The same year production of Bituminous coal was 171,000,000 tons; a combined total that year of 288,000,000 tons of coal. Pennsylvania miners produced nearly 16 billion tons of coal before Congress made it's finding that uncontrolled mining "burden and adversely affect commerce and the public welfare."

Although downplayed because of the general good times created by a booming coal economy, the price of that production was high. In 1910, the U.S. Army Corps of Engineers concluded that the rapid corrosion on the Monongahela River of steel river locks and barge hulls was the result of acid from abandoned mines. By the 1920's the river intakes of the water supplies for population centers like McKeesport, Greensburg, Latrobe, Johnstown, and Altoona were lost to mine drainage and were being replaced with water piped from reservoirs built high in the mountains. Sediment loading at the Philadelphia's Schuylkill River water works that, in 1948, the legislature authorized the construction of a series of desilting basins on the river. Today, those basins continue to function and the state continues to operate the dredges necessary to maintain their capacity.

Certainly Pennsylvania benefitted from all that coal being mined but, like most Appalachian states, the coal royalties went to the private coal owners. The communities' costs of hosting the industry were paid from the wealth created in the community. But, in a society that did not plan for a sustainable future, when the coal runs out, the mines close, the jobs and the wealth disappear, and all that's left are highwalls, spoil piles, pits full of water, mountains of waste coal, open shafts, orange streams, destroyed water supplies, inferno-like mine fires, and the clear and present danger that without warning homes and businesses will collapse from mine subsidence. Unable to effective compete for new economic opportunities, its young people move way, and the community slowly declines.

Today Pennsylvania is here to engage in the debate on re-authorization of the fees collected under SMCRA to reclaim abandoned mine lands. No other state has as much at stake as Pennsylvania. It is the Commonwealth's whose "commerce and public welfare" is most greatly compromised by abandoned mine lands. Our motivation to engage this debate is not greedy desire nor are we before you as beggars. The Commonwealth has a more than 50-year legacy of action in dealing with our AML problems. Our citizens stepped to the plate in 1968 with the $200 Million "Operation Scarlift" bond issue. They again put their money where their mouth is with 1999's $500 million Growing Greener program. Presently, Governor Rendell is pushing that another bond issue, called Growing Greener II, be placed on the ballot in November. If the voters agree, then they will put another $180 million towards AML reclamation in our state. With these funds, and the nearly $600 million the state has received under state grants from SMCRA's funded with the AML fee, much has been accomplished. But much remains yet to do. The job is simply not finished.

The National Abandoned Mine Land Inventory lists for Pennsylvania over $1 Billion of Priority 1 and Priority 2 non-general welfare work. These dollar figures are for construction alone. They do not account for administrative nor design/development expenses and, since they were generated in the 1980's, were never adjusted for inflation. Using the $1 Billion inventory amount and present state-grant levels simple arithmetic suggests it will take 40 years for just the P1/P2 non-general welfare work.

The state recognizes the burden the fee places on mine operators around the nation and tries to be a good steward of the funds we receive from them. To that end, we have developed programs designed to encourage reclamation by the modern industry as it seeks to recover resources left by past practices. This is known as remining. We also partner with our business communities, local governments, property owners, and civic organizations to find ways to reduce costs or leverage AML funds to the greatest extent possible. In the Commonwealth our citizens are choosing to be proud of their industrial heritage, not to be victims of it. Across the state they are rolling up their sleeves and getting to work. But they need help. Pennsylvania's Congressional delegation has stepped to the plate. They know SMCRA needs reauthorized and they are working hard to make sure that the political realities driving the reauthorization start with abandoned mine reclamation.

There are several bills before this Committee and several bills before the Senate. Governor Rendell and Pennsylvania are solidly supporting H.R. 3778 primarily introduced by Congressmen Peterson and co-sponsored by all 16 members of our Congressional Delegation. It is a companion bill to S. 2049 introduced in the Senate by Senator Specter and co-sponsored by Senator Santorum. This bill has the support of the Bush Administration and was presented earlier today by OSM Director Jarrett. I would direct your attention to the fact that Governor Rendell, a Democrat, stood shoulder-to-shoulder with Interior Secretary Gale Norton when Congressmen Peterson announced this bill as testimony to the bipartisan support the bill has in Pennsylvania.

The issues surrounding re-authorization are complicated and their solutions will likely be complex. I believe the three toughest are:

- Distribution of collected fees;
- Transfers to the United Mine Workers of America's health care plans; and
- Handling the unappropriated state share balances accrued under the existing law.

Pennsylvania prefers a future distribution of collected fees that maximizes completion of Priority 1 and Priority 2 AML sites. H.R. 3778 accomplishes this by replacing the present state-share/federal-share system with allocations based upon a given state's percentage of pre-SMCRA coal production. This approach directs the resources most efficiently to the problems while setting future distributions upon a solid foundation. Systems using a state-share system leave future distributions at risk of production declines from resource depletion or market completion.

H.R. 3778 also offers a responsible balance between reclaiming abandoned mine lands and fulfilling Federal promises made to retired mine workers. It is a compromise and is not a perfect solution. I fully recognize that H.R. 3778 does not commit to providing the full costs of the Combined Benefits Fund, nor does it include either the Reach-Back or Super Reach-Back categories of retirees, nor does it provide relief for certain coal companies struggling with contractual obligations left them by now defunct companies. These are serious issues that, if Federal commitments were made, then they are that America needs to live up to.

Pennsylvania believes strongly that government, regardless of whether it is a township, state, or the federal government, needs to meet its commitments. We support the payment of fees collected and allocated to the various states under the present law but never appropriated for payment. To the extent that those states have completed their P1 and P2 inventories and the states have certified under the provisions of SMCRA they should have the freedom to choose what to do with the monies. This provides those states with an opportunity to reclaim their abandoned non-coal mines that affect their communities and economies the same as coal AML does in Pennsylvania. That is an opportunity that states with large inventories and long paths to reach certified status will not enjoy.

H.R. 3778 also contains provisions aimed to reduce costs, eliminate paperwork, and encourage others to do the reclamation work at no or reduced costs to the fee payers. It eliminates the lien requirements that carry significant manpower costs but offer little benefit. It also provides that fees collected can be used to cover the bond costs for the previously abandoned portions of remining sites. In a time when bonds are difficult to purchase this promises to significantly reduce the modern industries costs for reclaiming the past. Finally, and perhaps most importantly, it gives the Secretary of the Interior the flexibility, through the promulgation of regulations, to create other incentives to maximize bang for the buck and create levers to bring other resources to bear on the problem.

For Pennsylvania this debate is over giving our coal communities a level playing filed as they compete for economic opportunities with communities across the nation, and indeed, around the world. AML does adversely affect our commerce and our public welfare. Our citizens have invested their own time and money in this effort. They have also reaped the benefits of SMCRA's fees collected for AML reclamation. But while the job is completed in some states, and close to being completed in others, under the current allocation formula it will be decades before it is done in the Commonwealth. By passing H.R. 3778 Congress can help us to get the job done in years, not generations.

Thank you.

Mrs. CUBIN. That's OK. We would like the oral statements to stay within 5 minutes.

Mr. Masterson, you are recognized for 5 minutes.

STATEMENT OF JOHN A. MASTERSON, COUNSEL TO HON. DAVID D. FREUDENTHAL, GOVERNOR OF THE STATE OF WYOMING

Mr. MASTERSON. Thank you, Madam Chairwoman. My name is John Masterson. I am appearing today at your invitation with our thanks on behalf of Governor David Freudenthal of Wyoming.

I want to first of all point out that 5 minutes seems like a long period right now, but in 15 minutes, I'll bet it doesn't seem like that long of a period.

It seems to the State of Wyoming that this is fundamentally a simply concept. We need to honor promises. We promised the State of Wyoming and the other States that are contributing to the AML fund that we would pay them and return to them half of the tax. We promised by way of the Combined Benefits Fund that we would take care of coal miners. It seems to me that's what we really need to be doing.

For a variety of reasons, the State of Wyoming cannot support the Administration's bill. It cannot support the administration of

Pennsylvania's bill, including it takes too long to repay that money. There is no interest on those monies being returned. There is no participation in future collections.

We do support the Rahall/Cubin bill. We are in support of that. It seems to us that there's four essential items that Cubin/Rahall covers that are important to the State of Wyoming, and I will just highlight those very quickly.

First of all, obviously, is the return of money owed to the States and the tribes. There are tribes and States out there that are owed hundreds of millions of dollars. Wyoming is at the forefront of those, and we feel those need to be repaid.

Reaffirming the commitment to work with States in the future on an ongoing basis is the second item that Wyoming feels is important. With all due respect to my colleagues from Pennsylvania, we don't think that their solution offers that on a continuing, ongoing basis.

Cutting the rate of tax is the third element that we feel is important. We think that that should happen. Finally, commitments made to the miners and their families need to be honored, and they need to be honored on a forward basis.

Those are the important things to the State of Wyoming, Madam Chairwoman. I will defer for any questions that you have. I want to thank you and the staff, and the staff of the Committee, for helping us, for working with us.

I need to tell you that the State of Wyoming feels somewhat excluded from the process that the Office of Surface Mining was involved in. My recollection is we have had about one meeting with Director Jarrett, and we were not involved in the crafting of the proposal that they had. We would like to be involved in those going forward, and we would like to participate in those. Your staff has been kind enough to include us in a lot of these conversations and a lot of these discussions, and whenever you want to meet with us, wherever, we will try to be there.

Thank you.

[The prepared statement of Mr. Masterson follows:]

Statement of John A. Masterson, Counsel to The Honorable David D. Freudenthal, Governor, State of Wyoming

Good Morning Mr. Chairman. My name is John A. Masterson, and I am the legal counsel to Governor David D. Freudenthal of the State of Wyoming. 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 H.R. 3796 and H.R. 3778.

I speak from the perspective of our nation's largest producer of coal and therefore, the nation's largest source of AML funds. I commend you for your willingness to hear from representatives of coal-producing states about this important issue. We stand 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.

I wish to thank Chairwoman Cubin and the members of the Subcommittee on Energy and Mineral Resources of the House Committee on Resources for inviting the State of Wyoming to testify at this hearing today.

SUMMARY OF WYOMING'S POSITION

I wish to begin by saying that Wyoming supports many of the AML fee reauthorization concepts contained in H.R. 3796 sponsored by Congresswoman Cubin and Congressman Rahall of West Virginia. 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 H.R. 3778 on the following items:

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

Wyoming strongly objects to the Administration's reauthorization proposal as contained in the H.R. 3778 on several counts:

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

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

HISTORY

Since the middle of the 19th Century, Wyoming has been a major source of energy to fuel America's industrial revolution and to support subsequent development. The transcontinental railroad project in the 1860's created both the demand for coal to operate locomotives, and the transportation artery for coal delivery to areas of demand. Wyoming sites along the transcontinental route, now Carbon, Sweetwater, Lincoln and Uinta Counties, were mined extensively.

As the network of rail lines expanded to serve more and more areas, so also expanded the market for Wyoming coal. Mines opened in Sheridan and Campbell Counties to supply demands nationwide for cheap, clean coal. Coal has been mined on some scale in nearly every one of Wyoming's 23 counties, and Wyoming citizens continue to live with that legacy. As I will discuss below, continuing inventory efforts have shown a much more extensive amount of reclamation than is currently recognized by the OSM. Further, small towns no longer supported by these historic mines are saddled with deteriorating infrastructure that requires attention. These needs can be adequately met only through a fair and balanced reauthorization bill.

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.

Despite the bill's intent and the clear mandate of law, Congress has never appropriated to states and tribes the 50% of fee collections guaranteed in the law. Wyoming, for example, has received only 29% of fees collected in our state since the approval of Wyoming's reclamation plan in 1983. This refusal of the Federal Government to discharge its obligations to the states is of grave concern to Wyoming.

In addition to the failure to allocate these funds, the unappropriated pool of money became an irresistible source of substantial interest income. As a result, SMCRA was amended by the Coal Act of 1992 to allocate that interest to mitigate deficits in the United Mine Workers Combined Benefit Fund (CBF). This diversion of interest deprives the states and tribes of an additional $70 million in annual revenue that could have been used to remediate the public safety hazards of unreclaimed mine sites. The potential to add additional beneficiaries to CBF coverage is another concern to Wyoming, as it would further reduce the pool of funds available to meet the original intent of SMCRA.

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 2003, Wyoming producers paid in $129,934,233, yet Wyoming's AML program received only $29,305,188 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, should have been distributed to AML states and tribes.

Through Fiscal 2003, Wyoming coal companies have paid over $1.894 billion into the fund. Only about 26% of these collections have returned to the State. Wyoming has received only $493,756,000 in annual allocations. Over $400,000,000 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.

In addition to the failure to allocate these funds, the unappropriated pool of money became an irresistible source of substantial interest income. As a result, SMCRA was amended by the Coal Act of 1992 to allocate that interest to mitigate deficits in the United Mine Workers Combined Benefit Fund (CBF). This diversion of interest deprives the states and tribes of an additional $70 million in annual revenue that could have been used to remediate the public safety hazards of unreclaimed mine sites. The potential to add additional beneficiaries to CBF coverage is another concern to Wyoming, as it would further reduce the pool of funds available to meet the original intent of SMCRA.

OBLIGATIONS TO COMBINED BENEFITS FUND

The 1992 Coal Act shifted the AML Trust Fund interest away from reclamation and towards the social needs of United Mine Workers' dependents 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. Wyoming is here today to remind you of the obligations of law adopted as part of SMCRA in 1977. States and tribes are to receive one-half of AML fee collections within their borders. The federal government has not lived up to this law, and appears to be moving even further from its original commitments under pressure from smaller, perhaps more vocal, constituencies.

Wyoming recognizes the Federal Government's obligations to the Combined Benefit Fund and accepts that the promises made to the miners who produced the energy to fuel America's industrial development must be kept. Wyoming encourages Congress to consider creative alternative funding mechanisms which would sever CBF dependency from AML revenues and allow those funds to be applied to the priorities established by Congress. The United Mine Workers Combined Benefits Fund is a healthcare problem that should not be resolved in the context of the AML fund debate. If the CBF funding remains a part of the AML obligations, then Wyoming suggests that the unpaid Trust Fund balance due the states be used to fund the required benefits going forward.

ACCOMPLISHMENTS OF THE WYOMING AML PROGRAM

Since implementation of the Surface Mining Control and Reclamation Act of 1977, Wyoming coal producers have paid almost $2 billion in reclamation fees into the AML Trust Fund. In return, Wyoming has received about $520 million, or about 29% of total collections. Wyoming consistently maintains an obligation rate in excess of 95% of funds received, and spends less than 3% on administrative costs. Over the past five years, Wyoming has spent or budgeted 25% to 30% of each year's consolidated grant for the reclamation of Priority 1and Priority 2 Coal sites, as such sites are identified. The balance of available funds has gone to Priority 1 and Priority 2 non-coal sites, and to public infrastructure projects in communities impacted by past and present mining activities.

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

systems, flood control projects, health clinics, schools, roads and other projects to abate public safety problems in communities impacted by mining.

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

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

HAZARDS REMAINING TO BE RECLAIMED IN WYOMING

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

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

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

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

WYOMING'S POSITION ON REAUTHORIZATION OF THE RECLAMATION FEE

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

1. Return of Trust Fund

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

Because annual AML appropriations to states and tribes have lagged behind AML fee collections, the AML fund has a current balance of $1.4 billion. Every year that these funds are not returned to the states and tribes of origin, the real value of these funds declines because of inflation and the rising cost of reclamation construction. Wyoming's state share balance in this account is estimated to exceed $420 million by September 30, 2004. These funds, now idle in a federal account, should be put to productive use

reclaiming hazardous mine sites and mitigating the deleterious effects of mining activities on Wyoming communities. This requires that the funds be returned without preconditions so the certified states are able to use the funds as they deem appropriate.

2. A Fair Share of Future Revenues

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

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

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

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

3. Reduction of Reclamation Fees

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

Coal production in Wyoming continues to increase at about 6% a year. This increase in production will 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. The Cubin/Rahall bill and the Thomas bill divert currently unappropriated RAMP funds (20% of current collections) and an additional 20% of fund revenues after state share allocations to historic coal allocations. Given these allocations, we can finish the job in all coal-impacted states and still be fair to all states and Tribes participating in the AML Program.

4. Objections to Administration's Proposal

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

Wyoming strongly objects to any proposal that would continue to tax Wyoming coal producers and return no part of those collections to the State. The Administration's proposal provides that some states are big winners in fund allocations, some states are held relatively harmless, while Wyoming is a big loser. We believe that the bills sponsored by Congresswoman Cubin and Congressman Rahall and by Senator Thomas are fair to all states and tribes with AML programs. Wyoming also notes that the Administration's proposal is still dependent on yearly budgets and Congressional appropriations. The reluctance of successive Administrations to recommend full funding of the AML program, and the reluctance of Congress to appropriate additional funding will not be resolved by the Administration's proposal.

CONCLUSION

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

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

In conclusion, Wyoming wishes to thank the House Subcommittee on Energy and Mineral Resources for the opportunity to be heard on these important issues.

[Mr. Masterson's response to questions submitted for the record follows:]

DAVE FREUDENTHAL
GOVERNOR

THE STATE OF WYOMING

STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

April 1, 2004

Honorable Barbara Cubin, Chairwoman
Subcommittee on Energy and Mineral Resources
Committee on Resources
United States House of Representatives
Washington, D.C. 20515

FAX: 202-225-5255

Dear Chairwoman Cubin:

Thank you for the opportunity to appear before the Subcommittee on Energy and Mineral Resources and to present Wyoming's views regarding abandoned mine land legislation.

Enclosed herewith, please find Wyoming's response to the question asked during the Hearing concerning variances between the Office of Surface Mining Abandoned Mine Land Inventory System (OSM AMLIS) and the information now being generated and verified by the Wyoming AML program.

Wyoming appreciates the hard work by you and your Committee to develop abandoned mine land legislation that will allow states to continue to address serious hazards to public health and safety. The bill proposed by you and Representative Rahall insures that all entities with a stake in the outcome of these deliberations are treated fairly.

Thank you for the opportunity to provide this additional information.

Sincerely,

John A. Masterson
Legal Counsel to the Governor

JAM/EJG/jn

Enclosures

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Chairwoman Barbara Cubin
Question During Oral Testimony
Legislative Hearing on
H.R. 3796 & H.R. 3778,
to Amend the Surface Mining Control and Reclamation Act of 1977
and Reauthorize and Reform the Abandoned Mine Reclamation Program.

March 30, 2004

Question by Chairwoman Cubin for Mr. Masterson of Wyoming, paraphrased:

"In your testimony, you addressed differences between the inventory used by the Office of Surface Mining to estimate costs of remaining reclamation, and the internal inventory process underway in Wyoming. Could you elaborate on the variances between those two inventories?"

Answer:

The Office of Surface Mining (OSM) maintains the Abandoned Mine Land Inventory System (AMLIS), and uses information provided by AML states and tribes to estimate future reclamation costs.

Since 2001, Wyoming has been involved in a comprehensive state-wide inventory process to identify hazardous coal and non-coal sites. Before the information derived from this process can be entered in the AMLIS system, the sites must be verified by field inspections which determine the hazard priority ranking, secure an accurate description of the extent of the hazards, and provide a cost estimate for reclamation. Unfortunately, Wyoming's entry of sites into AMLIS has been delayed until accurate information can be obtained through the field inspection process, scheduled for completion by the fall of 2004.

Wyoming's OSM AMLIS data base currently contains the following entries:

Priority 1 and 2 Coal:	68 sites, reclamation cost estimate:	$7,705,000
Priority 1 and 2 Non-coal:	175 sites, reclamation cost estimate:	$20,275,000

There are additional Wyoming sites in AMLIS that are unprioritized, and have not been remediated. These sites will be verified during the current inventory process.

Unprioritized Coal:	15 sites
Unprioritized Non-Coal:	66 sites

The research portion of Wyoming's inventory process has involved extensive utilization of underground mine maps, mining company records, Bureau of Mines data bases, and other historic sources to identify both coal and non-coal mine sites and mining districts. This raw data has been refined by Wyoming's inventory consultant team, and coordinated with other sources of information, to identify mine sites that have not been recorded in AMLIS. As discussed above, these sites will be verified by field inspections this summer.

Coal sites	
High Priority Coal (high certainty that a Priority 1 or 2 hazard exists)	182 sites
Medium Priority Coal (possibility for Priority 1 or 2 hazard)	1,001 sites
Total High and Medium Priority Coal	**1,183 sites**
Low Priority Coal (site is questionable or has Priority 3 or lower features)	564 sites
Total Coal sites not now recorded on AMLIS	**1,747 sites**

Non-coal sites	
High Priority Non-Coal (high certainty that a Priority 1 or 2 hazard exists)	1,230 sites
Medium Priority Non-Coal (possibility for Priority 1 or 2 hazard)	979 sites
Total High and Medium Priority Non-Coal	**2,209 sites**
Low Priority Non-Coal (site is questionable, or is Priority 3)	1,699 sites
Total Non-Coal sites not now recorded on AMLIS	**3,908 sites**

Reliable cost estimates for these sites cannot be derived until site conditions are fully inspected and recorded.

Relevant to this discussion is the importance of understanding that both the Wyoming AML inventory process, and the entry of eligible sites into AMLIS, is and will continue to be a dynamic process. New sites will be added as those sites are identified, assessed for hazard ranking and priority, and appraised for reclamation costs. Determining the exact nature of work required to reclaim a particular site is difficult if not impossible to establish at the time the site is first located, and before a field inspection confirms site conditions.

Mrs. CUBIN. Thank you, Mr. Masterson.
Now I recognize Steven Hohmann for 5 minutes.

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

Mr. HOHMANN. Good morning, Madam Chairman, and members of the Subcommittee. My name is Steve Hohmann and I'm Director of the Division of Abandoned Mine Lands within the Kentucky Department for Natural Resources. I am also president of the National Association of Abandoned Mine Land Programs. I am

pulling triple duty here today because I'm representing the NAAMLP, the Interstate Mining Compact Commission, and the Commonwealth of Kentucky. Initially, my remarks will be on behalf of the NAAMLP and the IMCC.

The future of the AML fund and its potential impacts on the economy, public safety and the environment will depend upon how we manage the fund and how we adjust the current provisions of SMCRA. We are aware in particular, Madam Chairman, of the bill you and Congressman Rahall have introduced, H.R. 3796, and the bill introduced by Congressman Peterson of Pennsylvania, H.R. 3778, reflecting the Administration's position.

However, given the diversity of opinions among our members, and the unique circumstances facing each State and tribe, we have been unable to agree upon a consensus position on either of these bills. Nonetheless, the States and tribes through IMCC and the NAAMLP and western Governors have over the past several years advanced proposed amendments to SMCRA that reflect a minimalist approach to adjusting the law. They are as follows:

To extend fee collection authority for at least 12 years; to adjust the procedure by which States and tribes receive their annual allocation of funds to address AML problems; to eliminate RAMP, the Rural Abandoned Mine Program; to assure adequate funding for minimum program under-funded States; to address a few other select provisions, including remining incentives, State set aside programs, handling of liens, and enhancing the ability of States to undertake water line projects; and finally, to address how the accumulated unappropriated State and tribal share balances in the fund will be handled, while at the same time assuring that an adequate State share continues for the balance of the program.

The States and tribes welcome the opportunity to work with your Committee, Madam Chairman, and other affected parties, to address the myriad issues that attend the future ability of the fund to address the needs of our coal field citizens. Our overriding concerns can be summarized as follows:

Adequate, equitable and stable funding must be provided to the States and tribes on an annual basis. The unexpended State share balance in the trust fund should be distributed to all the States and tribes as expeditiously as possible. Funding for minimum program States should 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, and any adjustments to the existing system of priorities must consider the impacts to existing State set aside programs in the current State efforts to remedy acid mine draining. Any adjustments to the current certification process should not inhibit the ability of States and tribes to address high priority noncoal projects. Any review or adjustments to the current inventory should account for past discrepancies and provide for the inclusion of legitimate new sites. Finally, any changes must be considered in a judicious environment that allows for all affected parties' concerns to be addressed, including the coal field residents.

Keep in mind, please, that any legislative adjustments that significantly reduce State AML funding or the efficacy of State programs could lead State legislatures, facing difficult budget times,

to seriously reconsider SMCRA primacy entirely, both Title IV and Title V. Hence, the importance of ensuring that the current State share provisions in SMCRA are held harmless.

The NAAMLP and the IMCC appreciate the opportunity to present this testimony today, Madam Chairman, and look forward to working with you in the future.

Now, the remainder of my comments will be on behalf of the Commonwealth of Kentucky.

Kentucky endorses and its entire House delegation is cosponsoring H.R. 3796, the legislation introduced by you and Representative Rahall. In addition to the singularly important issue of guaranteeing solvency for the Combined Benefits Fund, Kentucky supports H.R. 3796 for the following major reasons:

It provides immediate and long-term significant funding increases to all States and tribes. The bill maintains the State's share into the future. It eliminates the 30 percent cap on water line expenditures. The bill maintains the status quo concerning the administration of the AML Emergency Reclamation Program. And it extends the fee collection authority to 2019.

Madam Chairman, these are the major provisions that Kentucky desires and supports in an equitable AML reauthorization bill, and we feel that these provisions and others as presented in H.R. 3796 will ensure that no State or tribe is forgotten in the future of the AML reclamation program.

Kentucky is keenly aware that there are other approaches to attaining the same goals. With that understanding and a true need to continue our reclamation efforts, Kentucky remains willing to work with Congress, States and tribes, OSM, industry and citizen groups, to forge a new future for the AML program. Kentucky staunchly supports reauthorization of the fee and believes the approach embodied in H.R. 3796 is the preferable option.

I thank you for the opportunity to make this statement today.

[The prepared statement of Mr. Hohmann follows:]

Statement of Steve Hohmann, Director, Kentucky Division of Abandoned Mine Lands, Kentucky Department for Natural Resources

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

Currently, there are several different versions of an AML reauthorization proposal in Congress. The two proposals in the House are H.R.3778, the Peterson bill, and H.R. 3796, the Cubin/Rahall bill. Both of them extend the period for fee collection, increase funding to states with historic coal problems, and reduce the financial burden on the western states. There exist significant differences and some similarities in the methods each bill employs to attain the same goal.

Kentucky endorses, and its House delegation is cosponsoring H.R. 3796, the legislation introduced by Reps. Cubin and Rahall. H.R. 3796 contains the following items that Kentucky supports:

- Provides immediate and long-term, significant funding increases to all states and tribes;
- Targets funding at historic coal problems by redefining the priorities for expenditure. Kentucky prefers this approach to one that changes the method of funding distribution to target historic coal problems;
- Maintains the state share into the future and ultimately returns these funds based on the state share balance, or some equivalent method, keeping the state

share promise. Kentucky has the third largest state share balance, and it is critical to return those funds to the state to meet our reclamation needs. Kentucky has always used all its historic coal and state share funding to address high priority coal problems;

- Eliminates the 30% cap on waterline expenditures. Coupled with increased funding, this would allow Kentucky more discretion and ability to address the vital task of providing clean drinking water to the citizens in our coalfields. Provides immediate and long-term, significant funding increases to all states and tribes;
- Maintains the status quo concerning the administration of the AML emergency reclamation program. OSM already has the procurement guidelines in place, alternative environmental review procedures, and better access to critical funding to operate the emergency program. Kentucky believes that assumption of emergency reclamation would over burden Kentucky's already cash-strapped, normal reclamation program;
- Provides Remining incentives into the future;
- Reduces AML fees to operators in a manner that does not adversely affect state grants. Kentucky coal operators are struggling to compete in today's energy market and any financial relief received by a reduction in the AML fee would aid the Kentucky industry. A healthy coal industry is vital to our Commonwealth's economic prosperity;
- Returns state share balances to certain certified states with non-AML funds, and redistributes the replaced state share balances to the historic coal share;
- Addresses the financial solvency of the UMWA Combined Benefit Fund;
- Retains the AML Enhancement Rule; and
- Extends the AML program to 2019.

Madam Chairman, these are the provisions that Kentucky supports in an equitable AML reauthorization bill. We feel that inclusion of these provisions in AML legislation will ensure that no state or tribe is forgotten in the future of the Abandoned Mine Land Reclamation Program. Kentucky is keenly aware that there are other approaches to attaining the same goals. With that understanding, and a true need to continue our reclamation efforts, Kentucky remains willing to work with Congress, states and tribes, OSM, industry, and citizen groups to forge a new future for the AML program.

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

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

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

Recent statistics prepared by the Kentucky AML program highlight the benefit of AML hazard reclamation to coalfield citizens. From July 1 to December 31, 2003, the Kentucky AML program abated 82 abandoned mine hazards including 9

dangerous landslides, 3 unstable highwalls, 41 open portals, and 6 hazardous impoundments. Abatement of these hazards directly eliminated the risk to 476 citizens and indirectly benefitted another 851. During that same time period Kentucky AML restored 4 miles of streams and completed 6 waterline projects providing water to 704 households and businesses.

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

Over the life of the AML program, Kentucky coal operators have paid more than $875 million into the AML Trust Fund. Fifty percent of that amount, $437.6 million, is assigned to Kentucky's state share. To date, Kentucky has received $317 million from its state share through annual grants, leaving a balance in Kentucky's state share account of over $120 million. This unappropriated balance is part of the larger AML Trust Fund balance of $1.5 billion. Implicit in SMCRA is the promise that states would receive at least a 50% return on the amount of reclamation fees collected from within their borders. Without question, many more AML sites in Kentucky would have been reclaimed had Kentucky received its full return of state share money. It is important to note that any additional funding Kentucky receives, regardless of its origin as state or federal share, will be expended on high priority, coal-related hazard abatement and waterline projects.

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

The AML program has had many successes in Kentucky and throughout the nation, but as OSM has stated, "The job is not yet finished." In order to protect the present and future safety of our coalfield residents, Kentucky staunchly supports reauthorization of the AML fee and believes the approach embodied in H.R. 3796 is the preferred option.

Mrs. CUBIN. Thank you, Mr. Hohmann.

William Michael Sharp, Assistant Director of the AML program for Oklahoma Conservation Commission. Welcome, Mr. Sharp.

STATEMENT OF WILLIAM MICHAEL SHARP, ASSISTANT DIRECTOR, DIVISION OF ABANDONED MINE LAND, OKLAHOMA CONSERVATION COMMISSION

Mr. SHARP. Good morning, Madam Chairman, and members of the Subcommittee. My name is William Michael Sharp, Assistant Director of the Abandoned Mine Land reclamation program in Oklahoma. I appreciate the opportunity to appear before you to present testimony for the State of Oklahoma on the reauthorization of the Abandoned Mine Land reclamation fee and changes to the Surface Mining Control and Reclamation Act of 1977, often referred to as Public Law 95-87.

Of the 26 States and tribes with an approved AML reclamation program, eight States—Alaska, Arkansas, Iowa, Kansas, Maryland,

Missouri, North Dakota and Oklahoma—are considered as minimum program States. Webster's defines "minimum" as "least attainable". So, to many, the word could mean low lever, which in terms of AML problems, might be misinterpreted as not having very many AML problems.

Nothing could be farther from the truth. Even though Congress has established in law that minimum program States should receive annually not less than $2 million, the fact remains that for the past ten fiscal years they have received an annual appropriation of just $1.5 million.

This level of funding is simply inadequate to reclaim the number of high-hazard Priority 1 and 2 AML sites that exist in the minimum program States. AML programs in these critically underfunded States are forced to face projects over several years. Project inspection is cut back, and less on-the-ground reclamation is completed.

AML problems in minimum program States continue to take human lives and property, as well as degrade water quality. For example, subsidence continues to plague buildings and structures in North Dakota and Kansas. Acid mine drainage from underground coal mines in Maryland continues to degrade the water quality of the Potomac River, and deaths and injuries associated with dangerous high walls in Oklahoma persist.

Madam Chairman, in an effort to make the public more aware of the dangers associated with abandoned mines, the NAAMLP, in cooperation with several Federal and State agencies, has sponsored the production of an educational video on abandoned mine safety. It is titled "Stay out and stay alive." I would like to request that this video be placed into the record of this hearing.

Mrs. CUBIN. Without objection.

Mr. SHARP. Thank you, ma'am.

[The video has been retained in the Committee's official files.]

Mr. SHARP. In Public Law 95-87, the Natural Resource Conservation Service also has AML trust fund monies set aside for reclamation purposes under the Rural Abandoned Mine Program. Since Fiscal Year 1996, Congress has not appropriated any RAMP funds to States, thereby creating a balance of over $300 million in the AML trust fund earmarked for RAMP. The proposed legislation before us today is to eliminate RAMP under Title IV and reallocate the accumulated RAMP balance to States and tribes using the historic coal production formula in H.R. 3778, or to transfer it to the Combined Benefit Fund, H.R. 3796.

With either proposal, minimum program States will see no additional source of funding to address their Priority 1 and 2 AML problems. If one of the goals of reauthorizing SMCRA is to eliminate Priority 1 and 2 AML problems, then how can that be accomplished with funding minimum program States annually at $2 million? We would like the Congress to address this critical issue with regard to the minimum program States.

One suggestion we ask to be considered is to earmark a portion of the RAMP balance in the AML trust fund such that minimum program States could apply to OSM for supplemental grants above their annual $2 million grant. If the State is capable of obligating

these funds in a timely manner, they could continue to apply these funds in future years.

Approximately $90 million in high priority AML problem areas in Oklahoma continue to threaten death or injury to the public. In many cases, coal companies would mine through 100 feet of overburden to obtain 18-24 inches of coal. As a result, many sites are abandoned, leaving 100 foot dangerous high walls and water-filled strip pits. This is the reason so many deaths and injuries have occurred and will continue to occur in Oklahoma's 16-county AML area.

These AML hazards are located in heavily populated areas of the State, near major cities such as Tulsa, and two of the fastest growing areas of the State, Claremore and Broken Arrow. Near the town of Foyil, north of Claremore, seven known deaths have occurred in a radius of two miles. Open mine shafts/portals and subsidence related to underground coal mines also have the potential for death and injury.

In summary, since deaths and injuries related to AML problems continue, we support Congress in their effort to amend the Surface Mining Control and Reclamation Act of 1977 by reauthorization and reform of the Abandoned Mine Reclamation program, especially as outlined in H.R. 3796, the Cubin/Rahall bill.

We support present legislation that provides minimum program States no less than $2 million per year, since minimum program States have many AML problem areas that pose a health and safety threat to the public. Oklahoma has approximately $90 million of high priority AML problem areas.

Congress should require all States and tribes to reclaim Priority 1 and 2 AML problems before addressing lower priority problems. Minimum program States should be given the opportunity to apply for supplemental grants based on their ability to timely obligate those funds toward reclaiming high hazard Priority 1 and 2 AML problems.

We wish to thank the House Subcommittee on Energy and Mineral Resources for the opportunity to give this testimony, and I would be glad to answer any questions you may have.

[The prepared statement of Mr. Sharp follows:]

Statement of William Michael Sharp, Assistant Director, Division of Abandoned Mine Land, Oklahoma Conservation Commission

Good morning, Madam Chairman. My name is William Michael Sharp, assistant director of the Abandoned Mine Land (AML) Reclamation Program for Oklahoma. I appreciate the opportunity to appear before you to present testimony for the state of Oklahoma on the reauthorization of the Abandoned Mine Land Reclamation fee and changes to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87).

Minimum Program States

Of the 26 states and tribes with an approved AML Reclamation Program, eight states (Alaska, Arkansas, Iowa, Kansas, Maryland, Missouri, North Dakota, and Oklahoma) are considered as "Minimum" Program states. Webster's defines "minimum" as "least attainable." So, to many the word could mean low level, which in terms of AML problems might be misinterpreted as not having very many AML problems. Over the years, coal production in these states declined to the point that there was not sufficient coal tax revenue to administer an AML Reclamation Program as mandated by PL 95-87, even though these states had multiple AML problem areas posing a threat to the health and safety of the public. As a result, the "Minimum Program" was established by Congress in FY 1988 requiring that each

State and Tribe receive no less than $1.5 million annually. In FY 1989 actual funding fell to $1 million, but in FY 1990 and 1991 it returned to $1.5 million.

With $500 to $600 million of high hazard Priority 1 and 2 AML problems resulting in many mine-related deaths and injuries each year, these eight "Critically Underfunded States," with broad-based support, convinced Congress that their annual program funding should be at least $2 million. As a result, Congress passed the Abandoned Mine Reclamation Act of 1990 amending PL 95-87 (adding Section 402(g)(8)), which set an annual funding level of not less than $2 million for each state and tribe having an eligible AML Reclamation Program. For the next three fiscal years (FY 1992 thru FY 1994), the Minimum Program States received the annual $2 million. However, for the last 10 fiscal years (FY 1995 thru FY 2004) these States received an annual appropriation of only $1.5 million (excluding a small amount of funding for AML emergencies and Clean Streams Initiative projects).

There are several billion dollars of Priority 1 and 2 AML problems yet to be reclaimed nationwide. At least 25 percent of these problems are in the eight Minimum Program States, but these eight states receive only 10 percent of the funding each year.

An annual appropriation of $1.5 million is simply inadequate to reclaim the number of high- hazard Priority 1 and 2 AML sites in each respective state. Why? Because at this level, AML staffs are reduced to a "bare bones" staff, reclamation contracts must be phased over several years (which results in not reclaiming the total AML hazard), project inspection is cutback (which is critical to quality control), and less on-the-ground reclamation is completed.

In the last few years, there seems to be a misconception that Minimum Program States have reclaimed all of their high priority areas, therefore, they need less funding. In fact, the opposite is true. AML problems in Minimum Program States continue to take human lives and property, as well as degrade water quality. For example, subsidence continues to plague buildings and structures in North Dakota and Kansas. Acid mine drainage from underground coal mines in Maryland continues to degrade the water quality of the Potomac River, and deaths and injuries associated with dangerous highwalls in Oklahoma persist.

The lack of funding at the annual $2 million level the last ten years has resulted in a total loss of over $40 million to the eight Minimum Program States. For these States to again operate a more effective, viable, and efficient AML reclamation program, we were very encouraged to see that recent House and Senate bills concerning AML reauthorization contained language that Minimum Program States will receive not less than $2 million annually.

Reallocation of Rural Abandoned Mine Land Program (RAMP) Funds

In PL95-87 the Natural Resources Conservation Service (formerly SCS) also has AML Trust Fund monies set aside for reclamation purposes under RAMP. Since the passage of PL95-87, RAMP averaged approximately $4-9 million per year for projects nationwide. Several Minimum Program States were very active in RAMP, including Arkansas and Oklahoma, receiving $500,000 to $600,000 each year. Since FY 1996 Congress has not appropriated any RAMP funds to States. So, in addition to the ten-year $5 million loss due to Minimum Program underfunding, Oklahoma has also lost between $4.5 and $5.4 million in RAMP funds in the last nine years. Furthermore, since funds dedicated to RAMP have not been appropriated by Congress, there exists a balance of over $ 300 million in the AML Trust Fund earmarked for RAMP. The proposed legislation before us today is to eliminate RAMP under Title IV and reallocate the accumulated RAMP balance to States and Tribes using the historic coal production formula (H.R. 3778) or to transfer it to the Combined Benefit Fund (H.R. 3796). With either proposal, Minimum Program States will see no increased funding to address their Priority 1 and 2 AML problems.

If one of the goals of reauthorizing SMCRA is to eliminate Priority 1 and 2 AML problems, then how can that be accomplished with funding Minimum Program States annually at $2 million? We would like the Congress to address this critical issue with regard to the Minimum Program States. One suggestion we ask to be considered is to earmark a portion of the RAMP balance in the AML Trust Fund such that Minimum Program States could apply to OSM for supplemental grants from these earmarked funds above their annual $2 million grant. If the state is capable of obligating these funds in a timely manner, they could continue to apply for these funds in future years. Once Minimum Program States have exhausted their existing inventory of Priority 1 and 2 AML hazards, they could no longer apply for these funds.

Oklahoma AML Inventory

Approximately $90 million in high priority AML problem areas in Oklahoma continue to threaten death or injury to the public. In our state over 30,000 acres were surfaced mined for coal and over 40,000 acres were mined underground for coal. In many cases, coal companies would mine through 100 feet of overburden to obtain 18 to 24 inches of coal. As a result, many sites are abandoned leaving 100-foot dangerous highwalls and water-filled strip pits. This is the reason so many deaths and injuries have occurred and will continue to occur in Oklahoma's 16-county AML area. These AML hazards are located in heavily populated areas near major cities such as Tulsa (population 367,302) and two of the fastest-growing areas of the state, Claremore (29 miles northeast of Tulsa) and Broken Arrow (a suburb of Tulsa). Both of these cities have numerous high priority AML hazards. Near the town of Foyil, north of Claremore, 7 known deaths have occurred in a radius of two miles. Just recently, we received a call from a landowner north of Claremore that witnessed a young boy who had tied a garden hose to a tree and was repelling down an 80-foot highwall. Open mine shafts/portals and subsidence related to underground coal mines also have the potential for death or injury.

Conclusion

In summary:

- Since deaths and injuries related to AML problems continue, we support Congress in their effort to amend the Surface Mining Control and Reclamation Act of 1977 (PL95-87) by reauthorization and reform of the Abandoned Mine Reclamation Program, especially H.R. 3796;
- We support present legislation that provides Minimum Program States no less than $2 million per year since Minimum Program States have many AML problem areas that pose a health and safety threat to the public. Oklahoma has approximately $90 million of high priority AML problem areas;
- Congress should require all states and tribes to reclaim Priority 1 and 2 AML problems before addressing lower priority problems; and
- Minimum Program states should be given the opportunity to apply for supplemental grants based on their ability to timely obligate those funds toward reclaiming high hazard Priority 1 and 2 AML problems.

We wish to thank the House Subcommittee on Energy and Mineral Resources for this opportunity to present this testimony today. I would be glad to answer any questions you may have.

Mrs. CUBIN. Thank you.

As you can tell by the bells, we have been called for a vote. But I would like to get some of the questioning in before we are called to leave. I will start with you, Mr. Masterson.

You have indicated that Wyoming's ongoing inventory efforts have not been reflected in the AML Information System, which the Administration uses to make its prediction for future funding needs. Could you describe briefly the differences that you have seen? What sort of communications have taken place and so on?

Mr. MASTERSON. Madam Chairwoman, my understanding of the information system is that sites are allowed to be put into the information system after they are evaluated, after we have all the specifics, descriptions, and cost estimates of what items can be added and included on that formal system.

That is to be contrasted with the situation where we're going around and taking a statewide inventory and kicking tires and finding all these other sites, trying to identify those. We cannot put them on that information system, at least that's my understanding, until we have a better description and particulars as to all those cost estimates and exactly what it's going to take to clean them up. So the inventory, as I understand it, is going to be larger than what ends up on the information system at the end of the day. I think that the actual State physical inventory that's happening in the State of Wyoming will happen this summer.

Mrs. CUBIN. But the State has discovered sites that will qualify or should qualify for Priority 1 and Priority 2 clean up?

Mr. MASTERSON. Yes, ma'am.

Mrs. CUBIN. Actually, can you give me an idea of so far how extensive those inventories have been?

Mr. MASTERSON. I do not have the numbers, Madam Chairwoman. I would be happy to supplement that and I will have Mr. Green fax that answer to your staff. We should be able to get it to you within 24 hours.

Mrs. CUBIN. That's fine. Thank you.

Oklahoma's situation sounded a lot like Wyoming's. We do have sites developing, so I think that really exposes the need for the program to be able to continue funding sites that occur.

With that, I would like to yield to Mr. Rahall.

Mr. RAHALL. Thank you.

Let me begin by publicly thanking the Oklahoma Conservation Commission for all the assistance you have provided me and my staff over the years on this issue. Without failure, when I went to the States in the late eighties and early nineties to solicit their views on reauthorization, as I did again in 2000 and 2001, Oklahoma always provided the most detailed, constructive, and thoughtful comments. So I want to publicly thank you again for that.

Mr. SHARP. Thank you.

Mr. RAHALL. I also appreciate the other three testimonies, and to the panel in general, but to Pennsylvania specifically, I have heard your concerns over watershed funding, and I have heard this concern from certain other groups as well. Yet, the priority ranking system for projects in the law is that human health and safety must come first. Under Cubin/Rahall, we mean to strictly enforce that priority. As I have said over and over, that is maintaining the integrity of the original legislation.

At the same time, we first continue the acid mine drainage set aside; second, we allow the Appalachian Clean Streams Program to continue; third, we allow lower priority P-3 projects to be done prior to the completion of P-1's and P-2's, if done in conjunction with those types of projects; and fourthly, we provide for the State share balances to be used entirely for Priority 3 projects, once the Priority 1 and 2 human health and safety threats are addressed.

I guess I would just ask a general question, because it appears to some that that's not good enough. My response to that is, could we please leave some money to address the open pitfalls that swallow our teenagers, to mitigate the landslide that threatens grandma's home, and to combat the subsidence that may engulf an entire community?

Your comments. I mean, is that asking too much?

Mr. J. SCOTT ROBERTS. No, sir, that's not asking too much. I think in Pennsylvania we certainly agree and support that the first and foremost priority of any of our abandoned mine land programs within the Commonwealth is health and safety. That absolutely needs to come first.

You asked Director Jarrett earlier this morning about inventory items that Pennsylvania did put on the inventory, as provided for by the 1992 amendments, that are watershed basin type projects.

I will tell you right now that we have not, through any of these negotiations over the past year, said that we continue to advocate that they be given Priority 1 or 2 status. We do believe it's a problem and we do believe it needs addressing. We are trying to address it as best we can, but we do recognize that health and safety needs to be first.

Mr. RAHALL. Thank you.

Thank you, Madam Chair.

Mrs. CUBIN. Mr. Pearce?

Mr. PEARCE. No questions.

Mrs. CUBIN. Mr. Peterson.

Mr. PETERSON. Thank you.

What is the difference between a Priority 1 and a Priority 2? Maybe some of you can probably answer that.

Mr. J. SCOTT ROBERTS. Priority 1 are sites that are classified as extreme danger. Priority 2 are health and safety. The rule of thumb might be if there was an injury or a fatality on a site, it would generally be a Priority 1. If there was a danger of that, it would be a Priority 2.

Mr. PETERSON. It would be interesting to know, in the history of the fund, what percentage of the money that's going out annually is going to Priority 1 sites, because it would seem like that should be the first priority—I mean, if it's prioritized.

Does anybody have that data?

Mr. HOHMANN. No, but I think OSM could probably provide that. I do think, just from general knowledge, that most of the money that the States and tribes do expend is on Priority 1, the difference being the extreme danger is Priority 1 and Priority 2 is classified mostly as adverse effects of past coal mining.

Mr. PETERSON. OK.

Mr. RAHALL. Would the gentleman from Pennsylvania yield, very quickly?

Mr. PETERSON. Absolutely.

Mr. RAHALL. Just to quote directly from the law, Priority 1 is an "imminent" threat to health and safety. Priority 2 is a threat "non-imminent" to health and safety.

Mr. PETERSON. I guess it would be interesting to know if nationally we are putting the bulk of the funding toward Priority 1 sites. I don't know.

Mr. RAHALL. It's supposed to be, yes.

Mr. PETERSON. Currently, I think last year Pennsylvania got 17 percent of the money. We have 35 percent of the sites, and we have 46 percent of the people that live within a mile of a dangerous site. I think it shows that we're certainly not being overcompensated if you're looking at the historic problem. I don't think we're asking for 46 percent of the money or 35 percent of the money, but it seems like, if we really are going after the priority sites, we need to deal effectively with where they are and in some fair ration down the road. Is that an unfair statement? Anybody can answer that. Is that an unfair request?

Mr. SHARP. From Oklahoma's perspective, we certainly don't think so, because we're having a heck of a time trying to address Priority 1 and 2 sites in Oklahoma with just $1.5 million right now.

Mr. PETERSON. It would seem to me that we ought to solve all of the Priority 1 sites before we spend a lot of money on Priority 2 sites. Is that commonly happening?

Mr. SHARP. I would say, in Oklahoma's case, we have eliminated most of our Priority 1 sites, and we are working on the high Priority 2's now.

Mr. J. SCOTT ROBERTS. In Pennsylvania, I believe we have $42 million worth of Priority 1's remaining on the books. The bulk of the one billion then would be Priority 2 sites.

Mr. PETERSON. OK.

Mr. HOHMANN. In Kentucky, we have about $330 million in both Priority 1 and 2 sites on the books, and we currently spend the vast majority of our grant money on the Priority 1 sites.

Mr. PETERSON. Do all States have to match this with some—Is there a formula? You don't have to match this but you can just use it?

Mr. HOHMANN. That's correct. There is no match.

Mr. PETERSON. No match. So States are not required. Pennsylvania, in all the projects I have been involved in, have been a combination of Federal and State funding, I think.

Mr. J. SCOTT ROBERTS. I think we have been fortunate in that our taxpayers have stepped up to the plate and given us their monies to spend on these problems, also.

Mr. PETERSON. Yes, because of the severity of Pennsylvania's problems. But that's not common in all States. OK.

Mrs. CUBIN. I would like to thank the panel and remind them that we may have questions we will submit in writing, and that the record will remain open for 10 days to receive those. Thank you.

We're going to run and vote. We will be right back for the last panel.

[Recess.]

Mrs. CUBIN. I would like to resume the hearing.

At this point I would like to ask unanimous consent to allow Mr. Sessions from Texas to sit at the dais and offer a statement for the record. Hearing no objection, so ordered.

I ask unanimous consent that Mr. Sessions be allowed to give his statement now and then we'll take the testimony of the two witnesses.

STATEMENT OF HON. PETE SESSIONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. SESSIONS. I thank the young Chairwoman for her help in this matter, and I appreciate her holding this hearing today.

Mrs. CUBIN. I heard that "young".

[Laughter.]

Mr. SESSIONS. I also thank the members of the Subcommittee, including your Ranking Member, for his appearance today and the opportunity to talk about the reauthorization of the Abandoned Mine Land program, AML.

Continuing this worthwhile program to finance the reclamation of abandoned mines is critical to address the safety and health issues that are faced by citizens living near these sites. While the legislation being discussed today is important in providing abandoned mine cleanup, remedying State imbalances and providing for

continued solvency of the Combined Benefit Fund is also important. It continues a pattern by the Congress to apply a piecemeal remedy to the serious flaws in the Coal Act of 1992.

Dating back to the 105th Congress, a number of my colleagues and I have worked tirelessly on a piece of legislation to resolve the deficiencies of the Coal Act in a comprehensive, bipartisan fashion. If the Congress is going to remedy the Combined Benefit Fund solvency issue created by the 1992 Coal Act, I believe we also must remedy the business issues which are equally, if not more, damaging.

I am speaking of addressing the reachback tax, providing a refund of improperly collected premiums from the super reachback companies and eliminating the joint and several liability provisions for related entities of those companies who choose to prefund coal miner retiree health obligations.

These issues are fundamentally tied to the reauthorization of AML, but not addressed in the bill being examined today. To finally fix this problem in a fair and responsible manner for all parties involved, I believe three things must be included. For more than a decade, a large number of companies, now commonly referred to as reachback companies, have been burdened with an inequitable tax burden imposed on them by the Coal Act of 1992.

In that legislation, Congress scrapped a long history of dealing with the issue of health care benefits for retired coal miners through the collective bargaining process and, instead, mandated that the reachback companies, most of which had been out of the bituminous coal mining business for quite some time, step in and subsidize the financing of such benefits. These companies had never promised lifetime health care benefits to their employees. This financial burden being placed on the reachback companies has driven many into bankruptcy and put others on the brink of financial ruin, threatening the jobs of thousands of Americans.

In all of our history, Congress has never imposed such a retroactive burden on any industry. It is time now for Congress to correct this injustice. Congress must provide prospective relief for the reachback companies from this insidious tax. Prospective relief from this tax will allow reachback companies to spend money on internal growth, research, development, job creation, and economic security.

The second issue is the joint and several liability provision of the Coal Act. A logical and fair mechanism for funding is to permit a company to prepay its retiree health benefit liabilities in an actuarially sound fashion. With such prepayment, the company or the business would remain liable for any shortage in the actuarial-determined prefund premium and other units of the company would be relieved of their joint and several liability for the premiums. This approach would ensure that the industry's obligation to the Combined Benefit Fund will be fully met, while no longer penalizing the companies, many of whom were never before in the coal mining business.

Let me be clear. These companies are not seeking to avoid their obligation to the Combined Benefit Fund but simply to prefund this obligation, and to do it wholly. This prefunding option will remove any concern by the retired miners and their dependents that their

future health care benefits might be threatened and will allow the companies who choose this option to remove the unfair burden of the financial uncertainty imposed by the provisions of the Coal Act of 1992.

Finally, it is critically important that any legislation in this area refund the improperly collected premiums from the super reachback companies. The Supreme Court concluded that these and other similarly situated companies should never have been assessed premiums to finance the Combined Benefit Fund in the first place.

Including these three issues in the AML reauthorization legislation will serve the dual purpose of assuring the funding of retiree health benefits and ending the unfair burden placed on business entities, some of whom never employed a coal miner and never participated in the coal mining business. It is a comprehensive solution that will provide stability and fairness in meeting our commitments to the coal industry and to those retired miners, their families, and the remaining reachback companies that have been so unjustly saddled with this tax.

I want to thank the Chairwoman, the young Chairwoman, for allowing me to be here today. I would also like to ask unanimous consent to place two additional pieces of correspondence in the record.

Mrs. CUBIN. Without objection.

[The prepared statement of Mr. Sessions and additional correspondence follows:]

Statement of The Honorable Pete Sessions, a Representative in Congress from the State of Texas

I commend the Chairwoman for holding this hearing and thank the Members of the Subcommittee and the full Committee for allowing me the opportunity to address the reauthorization of the Abandoned Mine Lands (AML) program. Continuing this worthwhile program to finance the reclamation of abandoned mines is critical to address the safety and health hazards faced by citizens living in and near such sites.

While the legislation being discussed today is important in providing abandoned mine cleanup, remedying state share imbalances and providing for continued solvency of the Combined Benefit Fund, it continues a pattern by the Congress to apply a piecemeal remedy to the serious flaws in the Coal Act of 1992. Dating back to the 105th Congress, a number of my colleagues and I have worked tirelessly on legislation to resolve the deficiencies of the Coal Act in a comprehensive, bipartisan fashion. If the Congress is going to remedy the Combined Benefit Fund solvency issue created by the 1992 Coal Act, we must also remedy the business issues which are equally, if not more, damaging.

I am speaking of addressing the Reachback tax, providing a refund of improperly collected premiums from the "Super Reachback" companies, and eliminating the joint and several liability provisions for the related entities of those companies who choose to pre-fund coal miner retiree health obligations. These issues are fundamentally tied to the reauthorization of the AML, but not addressed in the bills being examined today. To finally fix this problem in a fair and responsible manner for all parties involved, these three issues must be included.

For more than a decade a large number of companies, now commonly referred to as Reachback companies, have been burdened with an inequitable tax imposed on them by the Coal Act of 1992. In that legislation, Congress scrapped a long history of dealing with the issue of health care benefits for retired coal miners through the collective bargaining process, and instead mandated that the Reachback companies, most of which had been out of the bituminous coal mining business for quite some time, step in and subsidize the financing of such benefits. These companies had never promised lifetime health care benefits to their employees. This financial burden being placed on the Reachback companies has driven many into bankruptcy and

put others on the brink of financial ruin, threatening the jobs of thousands of Americans.

In all of our history, Congress has never imposed such a retroactive burden on any other industry. It is time now for Congress to correct this grave injustice. Congress must provide prospective relief for the Reachback companies from this insidious tax. Prospective relief from this tax will allow Reachback companies to spend money on internal growth, research and development, job creation and economic security.

The second issue is the joint and several liability provision of the Coal Act. A logical and fair mechanism for funding is to permit a company to prepay its retiree health benefit liabilities in an actuarially sound fashion. With such prepayment, the parent company of the business would remain liable for any shortage in the actuarially determined prepaid premium and other units of the company would be relieved of their joint and several liability for the premiums. This approach would ensure that industry's obligations to the Combined Benefit Fund are met, while no longer penalizing companies—many of which were never in the coal mining business.

Let me be clear, these companies are not seeking to avoid their obligations to the Combined Benefit Fund but simply to pre-fund this obligation. This pre-funding option will remove any concern by retired miners and their dependents that their future health care benefits might be threatened, and will allow the companies who choose this option to remove the unfair burden of financial uncertainty imposed by provisions of the Coal Act of 1992.

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

Including these three issues in AML reauthorization legislation will serve the dual purpose of assuring the funding of retiree health benefits and ending the unfair burden placed on business entities—some of whom never employed a coal miner and never participated in the coal mining business. It is a comprehensive solution that will provide stability and fairness in meeting our commitments to these retired coal miners, their families and the remaining Reachback companies that have been so unjustly saddled with this tax.

[The letter submitted for the record by Mr. Sessions follows:]

Congress of the United States
Washington, DC 20515

March 29, 2004

The Honorable Richard Pombo
Chairman
Committee on Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Pombo:

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

As you know, for more than a decade a group of companies, now commonly referred to as Reachbacks, have been burdened with a heavy and inequitable financial tax burden imposed on them by the Coal Act of 1992. In that legislation, Congress scrapped a long history of dealing with the issue of health care benefits for retired coal miners through collective bargaining, and instead mandated that the Reachback companies assume liability for these health care benefits. Many of the Reachback companies had been out of the coal mining business for decades and had never contractually agreed to pay for the health care costs of former employees. In the ensuing years this abrupt imposition of such a new financial burden on the Reachback companies has driven a number of them into bankruptcy and put others perpetually on the brink of financial ruin. Even those who have survived have paid tens of millions of dollars for these health care benefits for those former employees.

These Reachback companies should never have had this burden imposed on them in the first place. Congress must now correct this grave injustice and determine another method of paying for health care benefits for retired coal miners. Over the years, a number of formal proposals to accomplish this have been put forward in the House and Senate. We believe that H.R. 3586 is a good example of what would be an appropriate way of addressing this inequity while at the same time preserving health care benefits for retired coal miners.

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

Finally, while the focus of this letter is on the Reachbacks, it is critically important that any legislation in this area refund the improperly collected premiums from the "Super Reachback"

The Honorable Richard Pombo
March 29, 2004
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companies. The Supreme Court concluded that these, and similarly situated companies, should never have been assessed premiums to finance the Combined Benefit Fund.

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

Sincerely,

Mrs. CUBIN. Mr. Rahall.

Mr. RAHALL. Thank you, Madam Chair.

I didn't expect this testimony today, but I think it's very important that the other side of this story be put on the record at this point. There is another side to this issue, as everybody in attendance today knows, and I think it's very important that it be raised, I guess at this point, although as I said, it's not the subject of today's hearing, nor did I expect this. But the bottom line is, these so-called "reachbacks" signed contractual agreements with the UMWA that contained what is known as the Evergreen clause. They signed these contractual agreements, promising health care.

Now they want out of the agreements, for whatever reason we'll not get into, but they want to walk away from these contractual obligations. So I think that clearly must be put on the record, that there is another side to this story.

Mrs. CUBIN. Thank you, Mr. Rahall.

Mr. Sessions, I do appreciate your testimony. As Mr. Rahall said, there are two sides to this story. I don't see the relationship between AML funding and the reachback companies, but I would recommend that you present this same testimony at a Ways and Means hearing because I truly see it in the jurisdiction of Ways and Means. But we are appreciative that you're here and appreciate your testimony.

Thank you, and thank you for calling me "young" twice.

Now I would like to recognize the third panel, Dave Young of the Bituminous Coal Operators Association, and Cecil Roberts, President of the United Mine Workers of America. We have had Cecil before this Committee many times and appreciate your appearance here again today.

With that, I recognize Mr. Young for 5 minutes of testimony.

STATEMENT OF DAVID M. YOUNG, PRESIDENT, BITUMINOUS COAL OPERATORS' ASSOCIATION

Mr. YOUNG. Good afternoon, Madam Chairman. I am President of the Bituminous Coal Operators' Association, and I would like to express my appreciation to the Committee for conducting this hearing. It gives the BCOA and other interested parties the opportunity to comment and make recommendations on the reauthorization of the Abandoned Mine Land program, or AML, within the context of H.R. 3796, as introduced by yourself and Congressman Rahall.

Our member companies have a keen interest in the operation of the program, and we believe that H.R. 3796, Cubin/Rahall, puts forth necessary reforms for the program to ensure that needed reclamation can be completed in this country.

We also urge the Committee to include provisions extending to coal "orphan" retirees in the '92 and '93 plans the same protection the legislation provides for "orphan" beneficiaries in the Combined Benefit Fund. With this addition, we will support the legislation.

The Coal Act set forth the principle that existing, in-business companies would pay for the retiree health expenses of their former employees, and the Government, by the use of interest from the coal industry funded AML program, would cover the cost of those retirees whose former employers were no longer in business, "orphans."

Coal industry retirees who become orphans receive benefits from three separate plans today based solely on their date of retirement. The Combined Benefit Fund provides benefits to miners who retired before July 20, 1992, based on premiums charged to employers and the use of AML interest to cover the orphan retirees.

In the case of a complete bankruptcy, that company's retirees in the Combined Benefit Fund are transferred to orphan status. The Coal Act also required companies to pay for the benefits of the retirees who were on their company plans and active employees who retired by September 30 of 1994. In this instance, the Act created the 1992 plan to provide for retiree health benefits for these

company plan orphans. Finally, eligible miners who retired after September 30th of '94, who become orphans, are enrolled in the '93 fund.

Since the passage of the Coal Act, the distribution of coal industry orphans retirees has changed dramatically, and in ways that could not have been foreseen in 1992. When the Combined Benefit Fund was established in February of 1993, more than 95 percent of the orphans were in the combined fund. At the end of 2003, however, less than 60 percent of the orphans today are in the combined fund. This percentage shift is a trend that will continue in the coming years.

Unlike the combined fund, the 1992 and 1993 orphan plans rely exclusively on private companies to provide health benefits. At the time of the legislative compromise that created the Coal Act, it was not anticipated that by adopting the 1992 orphan plan funding mechanism Congress was creating a "last employer standing" club, which like its predecessor plans, would prove to be unsustainable. This is dramatically demonstrated by the recent bankruptcies in the steel industry that could not have been foreseen and projected in 1992.

For example, LTV, Bethlehem Steel, and National Steel have each filed for Chapter 7 bankruptcy, adding approximately 5,000 of their former coal miners to the orphan beneficiaries already in the 1992 plan, and another 5,000 steel industry mining retirees were transferred to orphan status in the combined fund. One other major contributor with over 5,000 beneficiaries is in Chapter 11, and the outcome of that bankruptcy proceeding is very uncertain at this time.

The Medicare drug demonstration program has helped to address orphan plan needs for this calendar year. Special appropriations of prior year AML interest have averted the Combined Benefit Fund cuts in the earlier years. However, these stopgap measures are not a long-term solution to the orphan financing problem. Benefit cuts could occur as early as next year, 2005, unless the orphan financing mechanisms of the Coal Act are revised to meet the Act's goal of providing health care benefits to orphan retirees.

The steel industry bankruptcies have created inequitable and unsustainable burdens and, therefore, a fresh approach is required if the Coal Act's goals are to be maintained. Congress was correct to make AML interest an integral part of the original solution to the coal industry retiree health care problem. Reauthorization of the AML program provides the opportunity to complete the job begun in 1992 by financing the costs of all coal orphan retirees. Failure to use this opportunity to address the orphan financing issue clearly threatens the long-term viability of these funds.

We appreciate this opportunity to provide our views on H.R. 3796 and look forward to working with the Committee as the legislative process unfolds.

Thank you.

[The prepared statement of Mr. Young follows:]

Statement of David M. Young, President,
Bituminous Coal Operators' Association

Good morning, my name is Dave Young and I am President of the Bituminous Coal Operators' Association (BCOA). The BCOA represents its members in collective

bargaining with the United Mine Workers of America. BCOA is a settler of various multi-employer Funds including those established by the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"). BCOA also represents its members before Congress and the Executive Branch on retiree health and pension issues and coal mine health and safety.

I want to express my appreciation to the Committee for conducting this hearing. It gives the BCOA and other interested parties the opportunity to comment and make recommendations on the reauthorization of the Abandoned Mine Land ("AML") Program within the context of H.R. 3796 as introduced by Representatives Cubin and Rahall. Our member companies have a keen interest in the operation of the Program, and we believe H.R. 3796 (Cubin/Rahall) puts forth necessary reforms for the program to insure that needed reclamation can be completed. We also urge the Committee to include provisions extending to coal "orphan" retirees in the 1992 and 1993 Plans the same protection the legislation provides for "orphan" beneficiaries in the Combined Benefit Fund (CBF). With this addition we will support the legislation.

The Coal Act set forth the principle that existing, in-business, companies would pay for the retiree health expenses of their former employees, and the government, by use of interest from the coal industry funded AML program, would cover the cost of those retirees whose former employers were no longer in business ("orphans").

Coal industry retirees who become "orphans" receive benefits from three separate Plans based solely on their date of retirement. The CBF provides benefits to miners who retired before July 20, 1992, based on premiums charged to employers and the use of AML interest to cover the "orphan" retirees. In the case of a complete bankruptcy, where the company is no longer in business, that company's retirees in the CBF are transferred to "orphan" status. The Coal Act also required coal companies to pay for the benefits of the retirees who were on their company plans and active employees who retired by September 30, 1994. In this instance, the Act created the 1992 Plan to provide for retiree health benefits for these company plan "orphans." Finally, eligible miners who retired after September 30, 1994, who become orphans are enrolled in the 1993 Fund.

Since the passage of the Coal Act, the distribution of Coal Industry orphan retirees has changed dramatically and in ways that could not have been completely foreseen in 1992. When the CBF was established in February of 1993 more than 95% of the 28,400 "orphans" were in the CBF. At the end of 2003, however, less than 60% of the 29,100 "orphans" are in the CBF. This percentage shift is a trend that will continue in the coming years.

Until recently, AML annual interest had been large enough to cover the Combined Benefit Fund's "orphan" expenses. It is important to note that this interest is earned from an almost $2 billion balance in the AML Fund that was created and is supported solely by coal industry contributions. Between 1996 and 2002, Combined Benefit Fund orphan expense ranged between $47 and $68 million, and AML interest was generally adequate on an annual basis to cover these expenses. Reauthorization of the Program is an important part of maintaining the necessary funding base to provide for interest transfers to the CBF to pay for "orphan" retiree health benefits.

Unlike the CBF, the 1992 and 1993 Orphan Plans rely exclusively on private companies to provide health benefits. At the time of the legislative compromise that created the Coal Act, it was not anticipated that by adopting the 1992 Orphan Plan funding mechanism, Congress was creating a "last employer standing" club that, like its predecessor plans, would prove to be unsustainable. This is dramatically demonstrated by the recent bankruptcies in the steel industry that could not have been projected when the Act was passed in 1992. For example, LTV, Bethlehem Steel and National Steel have each filed for Chapter 7 bankruptcy adding a total of approximately 5,000 of their former coal miners to the "orphan" beneficiaries already in the 1992 Plan and another 5,000 steel industry mining retirees were transferred to "orphan" status in the CBF. One other major contributor with over 5,000 retired beneficiaries is in Chapter 11 and the outcome of that bankruptcy proceeding is uncertain at this time.

The Medicare drug demonstration program has helped to address orphan plan needs for this calendar year. Special appropriations of prior year AML interest have averted CBF benefit cuts in earlier years. However, these stopgap measures are not a long-term solution to the orphan-financing problem. Benefit cuts could occur as early as 2005 unless the orphan financing mechanisms of the Coal Act are revised to meet the Act's goal of providing health care benefits to orphan retirees.

The steel industry bankruptcies have created inequitable and unsustainable burdens and, therefore, a fresh approach is required if Coal Act's goals are to be

maintained. Congress was correct to make AML interest an integral part of the original solution to the coal industry retiree health care problem. Reauthorization of the AML Program provides the opportunity to complete the job begun in 1992 by financing the costs of all coal "orphan" retirees. Failure to use this opportunity to address the orphan financing issue clearly threatens the long-term viability of these Funds.

We appreciate this opportunity to provide our views on H.R. 3796 and look forward to working with the Committee as the legislative process unfolds.

Mrs. CUBIN. Thank you, Mr. Young.

I would now like to recognize Mr. Roberts for 5 minutes.

STATEMENT OF CECIL ROBERTS, PRESIDENT, UNITED MINE WORKERS OF AMERICA

Mr. CECIL ROBERTS. Madam Chairman, there has been a lot said about keeping promises here today. I want to take a moment and thank you for keeping one.

I first appeared before your Subcommittee 4 years ago, after a rally here in Washington of 12,000 UMWA retirees who were fighting to keep their health care. On that day, after the rally, I had the pleasure of testifying before your Subcommittee, and you promised that day that you would work with Congressman Rahall to try to find a solution and to help coal miners keep their health care. You have kept that promise. On behalf of all these beneficiaries, I want to thank you.

I would also like to thank and put on the record our thanks to the Governor's office in Wyoming, who has been very supportive as we have tried to find a solution to meet Wyoming's needs and West Virginia's needs, and all the coal field communities' needs, that we also do not leave behind these retirees. We want to thank his office and him, and if you would pass that on, I would certainly appreciate it.

Of course, I always state publicly the appreciation that I have and the friendship that I have, as well as all our members, for the work of Congressman Rahall. It is our belief that coal miners don't have a better friend in the House of Representatives, or have we ever had a better friend in the House of Representatives, than Congressman Rahall. He knows these issues and he has fought hard for them over many, many years. We thank him publicly today for that.

Much has been said today and I don't desire to restate some of the facts that are on the record already. But I just want to remind everyone of the Government's heavy involvement in the protection of coal miners and the promise that was made. Congressman Rahall, in his opening statement, mentioned the fact that the President of the United States, the highest official in our land, initially made this promise in 1946 to John L. Lewis, who was the president of the United Mine Workers of America at that time. I think we should go back to the thirties for just a moment, if I might.

Leading up to the war and during the war, World War II, John L. Lewis and the United Mine Workers desired to have pension protection for coal miners and health care for coal miners, but they stayed on the job at the President's urging so that we could win that war. Then in 1946 we had the historic agreement.

But after we had the historic agreement in 1946, the Government set up a commission known as the Boone Commission that went out and looked at the health care and the living standards of coal miners throughout the United States of America, every State in the Union where coal was being mined. That report is on record that indicates the need for health care in coal field communities and pensions in the coal field communities. So the Government was involved before 1946, the Government was involved in 1946, and the Government was involved right after 1946. I believe the final report of the Boone Commission either came out in 1947 or 1948.

Then in 1990, during the historic Pittston strike over the cutting off of 1,600 pensioners' health care, the U.S. Government once again became involved in this dispute through the Secretary of Labor's office, Elizabeth Dole, and establishing a mediator that she appointed, and also William Usery and other Secretaries of Labor. I would point out that both of these Secretaries of Labor that I just mentioned were Republicans and were appointed by Republican Presidents, so it has been a bipartisan effort to deal with this particular effort.

Of course, we had the passage in 1992 of the historic Coal Act, introduced in the Senate by Jay Rockefeller and in the House by Nick Rahall. Of course, down through the years Senator Byrd has had to step forward and help provide funding for this program. Here recently, this current Administration helped provide additional funding to carry this program forward until October of next year.

Everyone involved in this, Republican and Democrat, this White House, all the leadership in this country, says this is a program that needs to be protected and we need to find a long term, permanent solution to this problem. I support the efforts that you, Congressman Rahall, are making on behalf of this Nation's 46,000 coal miners.

I just want to mention one thing, if I might. Last Thursday I was in southwestern Pennsylvania, and I met with 1,000 beneficiaries of this program. They lined up after that meeting, and I spoke to widows whose husbands has just passed away, and they were crying and saying, if it was not for this particular fund, they would be bankrupt. They would not have been able to survive.

This one particular lady that had just lost her husband, she has cancer herself. She said, "I don't know what I would do without the United Mine Workers, this Combined Benefit Fund, and our friends in Congress." That's the message I will leave with the two of you today.

Thank you.

[The prepared statement of Mr. Cecil Roberts follows:]

Statement of Cecil Roberts, President, United Mine Workers of America

Madam Chairman, members of the Subcommittee, I am Cecil Roberts, President of the United Mine Workers of America (UMWA). The UMWA is a labor union that has represented the interests of coal miners and other workers in the United States and Canada for more than 114 years. We appreciate the opportunity to appear before the Subcommittee to discuss the Abandoned Mine Land Reclamation Fund (AML Fund) and its vital relationship to the Coal Act. Representing people who live and work in the nation's coal fields, the UMWA has a strong interest in both the reclamation of abandoned mine lands and the preservation of health care for UMWA

retirees who worked hard all their lives to provide the nation with energy. We strongly support the extension of the AML program in a way that accomplishes both these goals.

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

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

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

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

Congress has intervened three times in the past five years to shore up the financial condition of the CBF through emergency appropriations of interest money from the AML Fund. In December 1999, Congress provided $68 million to cover shortfalls in CBF premiums. In October 2000, Congress appropriated up to $96.8 million to cover deficits in the CBF's net assets through August 31, 2001. And most recently, in January 2003, Congress appropriated $34 million from the AML interest account to the Combined Benefit Fund. In addition, the UMWA Funds and the Center for Medicare and Medicaid Services (CMS) expanded their existing nationwide, risk-sharing Medicare Demonstration project in January 2001 to include a new prescription drug component. That project was scheduled to run three years, until mid-2004, and to reimburse the Funds for 27% of its Medicare prescription drug expenditures. It is a pilot project designed to demonstrate the efficacy of providing prescription drugs under Medicare, a timely project that we believe will prove useful to CMS and Congress as we expand prescription drug coverage to the Medicare population.

I am pleased to report that the Administration, with bipartisan support from members of Congress, recently announced an extension of the prescription drug demonstration program that will increase the percentage reimbursement and extend the program until September 30, 2005. This infusion of additional cash is certainly welcome news, as it will prevent what otherwise would have been a disastrous benefit cut. This, however, is only a temporary reprieve. There is a clear and growing

bipartisan consensus that there must be a long-term solution to the financial problems of the Coal Act.

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

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

Two primary AML re-authorization bills have been introduced in the House of Representatives. The Administration proposal (H.R. 3778) has been introduced by Representatives John Peterson and Don Sherwood of Pennsylvania. In addition, a comprehensive AML reform bill (H.R. 3796, the Abandoned Mine Lands Reclamation Reform Act of 2004) has been introduced by Representatives Barbara Cubin of Wyoming and Nick Rahall of West Virginia. Both AML proposals extend the authority of the AML to collect the reclamation fees at a lower rate than current law mandates. Both bills appear to raise about the same amount in cumulative revenue, although there are slight differences in fee amounts and duration. However, H.R. 3778 does not provide for a long-term financial solution for the continued provision of benefits under the Coal Act. Only H.R. 3796 accomplishes that goal.

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

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

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

GAO Study

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

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

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

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

The UMWA Health and Retirement Funds and the U.S. Government

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

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

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

visions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

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

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

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

The Coal Commission

In the 1980s, medical benefits for retired miners became a sorely disputed issue between labor and management, as companies sought to avoid their obligations to retirees and dump those obligations onto the UMWA Funds, thereby shifting their costs to other signatory employers. Courts had issued conflicting decisions in the 1980s, holding that retiree health benefits were indeed benefits for life, but allowing individual employers to evade the obligation to fund those benefits. The issue came to a critical impasse in 1989 during the UMWA-Pittston Company negotiations. Pittston had refused to continue participation in the UMWA Funds, while the union insisted that Pittston had an obligation to the retirees.

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

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

The underlying Coal Commission recommendation was that every company should pay for its own retirees. The Commission recommended that Congress enact federal legislation that would place a statutory obligation on current and former signatories to the National Bituminous Coal Wage Agreement (NBCWA) to pay for the health

care of their former employees. The Commission recommended that mechanisms be enacted that would prevent employers from "dumping" their retiree health care obligations on the UMWA Funds. Finally, the Commission urged Congress to provide an alternative means of financing the cost of "orphan retirees" whose companies no longer existed.

The Coal Act

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

In the legislative debate that followed, much of the underlying structure of the Coal Commission's recommendations was maintained, but there was strong opposition to a general coal tax to finance the benefits of orphan retirees. A compromise was developed that would finance orphans through the use of interest on monies held in the 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 CBF, 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 multi-employer benefit plans that provide health care benefits to retirees in the coal industry;
>
> (2) to allow for sufficient operating assets for such plans; and
>
> (3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans."

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

Recent Court Decisions

The 2002 GAO study found that a number of court decisions have eroded the financial condition of the Combined Fund—and the legal onslaught on the Coal Act continues. While Congress clearly intended that the Coal Act be financially self-sustaining, various court decisions have undercut Congressional intent. A 1995 decision by a federal court in Alabama in NCA v. Chater overturned the premium determination by the Social Security Administration (SSA) and reduced the premium paid by employers by about 10%. Over time, the effect of this decision was to remove

hundreds of millions of dollars from the financing structure of the Coal Act. A 1999 decision by the same court ordered the CBF to return about $40 million in contributions to the employers, representing the difference between the original SSA premium rate actually paid and the rate established in NCA. The trustees of the CBF filed suit against the Social Security Administration in the District of Columbia in an attempt to set aside the NCA decision. In late-2002, the D.C. Court struck down the Social Security Administration's nationwide application of the NCA decision and ordered SSA to report to the Court what premium rate should apply to companies not covered by the NCA decision. In June 2003, SSA notified the Court it would apply a higher premium to companies not covered by the earlier decision. However, over 200 companies have filed another action in Alabama asking to avoid paying the higher rate.

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

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

I mentioned earlier the bankruptcies of a number of steel companies that had retirees covered by the Coal Act. Recent bankruptcies at LTV, Bethlehem Steel and other integrated steel companies that operated coal mines under UMWA contracts have further reduced the premiums paid to the CBF, increased orphan costs for the AML Fund, and added thousands of 9711 plan beneficiaries to the 1992 Plan. The growth in the orphan population has forced a dwindling number of employers to fund a growing burden of health care expenses for retirees who did not work for them. The magnitude of these bankruptcies, which we believe that Congress did not anticipate when it passed the Coal Act, has exacerbated the problems of the Coal Act and reinforce the call for a long-term solution.

Now is the Time For a Long-Term Solution

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

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

Mrs. CUBIN. Thank you. I appreciate your testimony.

I want to start with Mr. Young. Could you respond to Director Jarrett's statement that the AML fund currently earns 4.1 percent?

Mr. YOUNG. I think, Madam Chairman, that Mr. Jarrett was correct on the $1.3 billion, which he spoke to under the trust fund. I think about 60 percent of the money is invested over 4 percent. That process was started in October, with about half of the 1.3, and then again the remaining half in January—

Mrs. CUBIN. In October of 2003?

Mr. YOUNG. Yes.

Mrs. CUBIN. So it hasn't even been a full year.

Mr. YOUNG. It's been less than 6 months. And the remainder, the $700 million, to my understanding, is on an overnight basis, with about, I think, less than a 1-percent interest return at the moment.

Mrs. CUBIN. Thank you.

Your testimony calls for the Committee to extend the orphan provisions of the CBF to the orphan retirees in 1992 and 1993. What would likely be the ballpark cost of an addition over the 15 authorization of this bill, using CBO figures if you have them.

Mr. YOUNG. I do not have CBO figures, but I have some figures that I will share with you from the health funds, and their actuary is fairly accurate and I think the CBO uses his numbers as a whole.

The expense is limited basically by the interest that is returned to the AML fund. If you use an estimate of 4 percent interest, as we're getting at the moment—I would like to see that be higher, but 4 percent—that would be limited. The '92 fund would be approximately $149 million over the next 10 years, and the '93 fund would be slightly less at $132 million over the 10 year period.

Mrs. CUBIN. Thank you.

You called for a fresh approach to maintaining the Coal Act's goals in light of the steel industry's bankruptcies. Could you elaborate on what you view as a "fresh approach"?

Mr. YOUNG. A fresh approach is not the "last man standing", where we have fewer coal companies as we get smaller and smaller, paying more and more expenses for more people. I think the funding mechanism needs to be replaced by the interest approach of AML and working in that scenario.

On the reclamation side, we support the Cubin/Rahall approach. That's our thinking, I think, Madam Chairman.

Mrs. CUBIN. Thank you.

Mr. Rahall?

Mr. RAHALL. Thank you, Madam Chair.

Gentlemen, thank you very much for your testimony today. I don't have any specific questions, other than to make a couple of comments.

It has been said often back home, especially at this time of year, as we enter the political season—charges have been leveled against me that I'm a Congressman from the UMWA, charges I say, or that I'm a representative of special interests in Washington. I can only respond to those charges, President Roberts, by saying if fighting for equality, justice and human rights and trying to keep promises made to our coal miners is fighting for special interests, then I plead guilty. I plead guilty, guilty, guilty as charged.

Anyway, Dave, I appreciate your comments about the '92 and '93 plans as well. They certainly need to be addressed. It appears here that we're creating a whole new class of orphans, those that are

being primarily orphaned as a result of the steel industry bankruptcies that we're seeing today. I'm afraid we may soon see ourselves back in the situation we had in the late eighties and early nineties, which gave rise to the Dole Commission, to which you referred, and subsequently the Coal Act of 1992.

It is a matter of equity that we address these two plans, the '92 and '93, as well as the CBF. It doesn't matter to a retired person one iota, who faces health care cuts, which box they fit into, the CBF or any of the other plans. They just know they're going to have some rough times in their elderly years.

I conclude by again thanking both of you for your help to our staffs and this Committee in drafting this legislation, your understanding of the complexities involved, your understanding of the realities of the legislative process, and what is doable and what is not doable here in the halls of Congress. You both represent your memberships superbly and I salute you for that.

President Roberts, you, for one, have never forgotten the place from whence you come, from West Virginia. Your parents live in Cabin Creek. Your membership that is here today with you knows full well your daily and dedicated efforts on their behalf, whether it's here in Washington or whether it's the hills and hollows of West Virginia, Pennsylvania, or whatever part of this Nation. As I said, you have never forgotten the place from whence you come. We appreciate your leadership here in the Congress.

Mr. CECIL ROBERTS. Thank you very much.

Mr. RAHALL. Thank you, Madam Chair.

Mrs. CUBIN. Thank you very much.

I would like to remind the witnesses that there may be further questions we would like to submit in writing.

I want to thank you for your testimony and thank all of you for being here today.

Mr. RAHALL. Madam Chair, before we conclude, may I ask unanimous consent that a statement of the Citizens Coal Council be made a part of the record today, their testimony?

Mrs. CUBIN. Without objection, so ordered.

[The prepared statement of the Citizens Coal Council follows:]

Statement of Citizens Coal Council, 110 Maryland Avenue N.E. #408, Washington, D.C. 20002, on H.R.3796 and H.R. 3778

Madame Chairwoman and Members of the Committee:

This statement is submitted on behalf of Citizens Coal Council to the House Resources Committee on the issue of the reauthorization of the Abandoned Mine Lands program. CCC appreciates the opportunity to present its views and respectfully requests that this statement be included as part of the hearing record.

Identity and Interest

Citizens Coal Council (CCC) is a federation of 47 coalfields citizens groups in 20 states. Our members live near abandoned mine sites and have been deeply involved in the struggle to clean them up. They restore watersheds from mine drainage, work to identify AML hazards, and get funding for their cleanup, cleanup abandoned mines themselves, and work to protect their communities from drinking water contamination from abandoned mines by working for AML-sponsored waterlines.

CCC and its members care deeply about this program—it makes a direct impact on our families' health and safety and the well-being of our communities. We have worked for several years both in Washington and in the coalfields to bring attention to its importance and the need for reauthorization.

CCC's Position on the AML program

Abandoned mines are not just one state or another's problem. Our entire country has benefitted from these old mines—they fueled our country's industry for over a hundred years, making possible cross-country railroads and cities of steel. Every coal company, regardless of where they are located, has benefitted from the utilities' longtime dependence on coal, and thus has a responsibility to pay for the cleanup of these old mines.

Now, having waited 25 years to get these hazards cleaned up and with more than 3.6 million people living within one mile of abandoned mines, we urge the Committee to realize that this is a critical health and safety matter and to come together to write a reauthorization bill to solve this issue once and for all.

We ask that the Committee focus on one simple question—How can we structure this reauthorization to clean up as many mines and protect as many people as possible?

With that question in mind, Citizens Coal Council has not endorsed any of the bills currently proposed in their entirety. Our members from across the coalfields have established that certain things should be in an AML reauthorization bill if it is truly going to cleanup these hazards. In addition to the following, we support continued funding of the UMWA Combined Benefits Fund through AML interest.

1. Extend the collection of the AML fee and the AML program long enough to finish the job: 25 years.

At current levels of reclamation, 16 states will not be done the 15 years called for in H.R. 3796, including Alaska, Alabama, Colorado, Iowa, Kansas, Kentucky, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, and West Virginia.

Based on current funding levels, projected future production, and estimated cost of cleaning up inventoried sites, it will take 25 years to address AML problems in the country. Extending the program another 25 years would honor the intentions of the program created by the 1977 surface mining law—that communities which provided natural resources and labor which fueled the nation for many years before federal regulation of surface mining would not have to forever be burdened by unreclaimed coal mines.

2. Increase the level of funding allocated to areas where pre-1977 mining occurred.

The primary purpose of the AML program is to reclaim land mined before 1977. Though many of the areas that mined coal before 1977 currently have low coal production, these areas are the ones in most desperate need and are the states that fueled the nation prior to enactment of surface mining laws. Funding should be directed there.

3. Don't undermine the financial basis of the AML program by cutting the fee.

The 20% fee cut called for in both bills is a waste of money that could be spent cleaning up dangerous hazards. It is also irresponsible in this time of deficits. Savings from the fee cut are not economically significant and will not be passed on to the consumer—but it will cost the AML fund $50 million a year. This is money that the AML fund desperately needs.

4. Do not use AML moneys to subsidize coal company reclamation bonds

H.R. 3778 calls for the federal government to develop regulations to use AML money for "financial assurance for remining operations in lieu of all or part of the performance bond required under Section 509 of this Act." This is a misappropriation of AML funds, which should be spent on threats to our health and safety. Our communities live daily with orange streams, subsidence, and safety hazards because there is not enough AML money to go around. In contrast, remining usually does not address the most hazardous sites.

Subsidizing mining bonds encourages irresponsibility. One of the key reforms of the 1977 Surface Mining Act was to make coal companies put up the money beforehand to reclaim their mine. If a company decides not to reclaim, it forfeits its bond and loses that money. Without a financial stake in the reclamation bonds, a company has no incentive not to forfeit the bond—or not to mine recklessly before it forfeits.

In addition, remining AML sites always has the potential to increase the size and scope of the problem, causing slides from unstable high walls, new acid mine drainage, new subsidence, or underground flooding. This is not something the federal government should become financially responsible for. Remining is already encouraged with exceptions from water quality standards.

5. Continue to recognize clean water as a health priority.

H.R. 3796 removes "general welfare" as a category for Priority 2 funding, meaning many stream restoration and water projects will no longer be funded. Polluted water is a health threat and cleaning it up should be funded that way. Restoring headwater streams, a "general welfare" activity, has a direct impact on the availability of clean drinking water and the health of the rivers downstream.

Retaining this provision does not deprive any other states of their share of funding. It provides states with more flexibility to address the most important hazards as they perceive them. Living with the problems provides them with the insight to choose where this funding should be spent to address health and safety issues.

6. Increase minimum program funding level from $2 million to $4 million annually.

States which have significant AML problems but which have small AML programs are supposed to be guaranteed minimum funding of their programs by statutory mandate. Since 1977, this minimum program funding has been set at $2 million. 25 years later, that is not enough money, even if it was fully funded, to address the serious problems in these states.

7. Include non-primacy state programs as minimum programs.

States which do not have their own coal regulatory programs are not eligible for a 50% share of AML money collected in the state or funding based on historic production. These states do not have the same minimum program funding guarantee afforded to states with regulatory primacy. These states are also limited in what types of AML problems they can receive funding to address. If a state demonstrates the ability to operate an effective abandoned mine reclamation program and funds it accordingly, like Tennessee, it should be granted federally managed (non-primacy state) minimum program funding.

Conclusion

Madame Chairwoman and Members of the Committee, CCC respectfully encourages you to consider the above issues and to remember that the purpose of the AML program is to clean up America's abandoned coal mine hazards. Please pass out of committee a bill that will do that, once and for all. We appreciate this opportunity to present our views.

[A statement submitted for the record by Congressman Cantor follows:]

Statement of The Honorable Eric Cantor, a Representative in Congress from the State of Virginia

I commend the Committee for considering important legislation to reauthorize the Abandoned Mine Lands (AML) program. Reclamation of abandoned mine lands should remain a priority to help ensure that health and safety issues are properly addressed.

As the Committee considers AML reauthorization legislation, however, it is vital that the critical problems relating to the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") be addressed in a comprehensive manner to ensure that beneficiaries of the Combined Benefit Fund (CBF) as well as companies paying into the Fund are not seriously jeopardized by unintended consequences of the Coal Act provisions.

As this Committee is aware, the Coal Act allows the transfer of up to $70 million in interest earned by the AML Fund to the Combined Benefit Fund ("CBF") to cover the health care expenses of coal miner retiree "unassigned beneficiaries". The pool of these unassigned beneficiaries is growing as several of the assigned operators, including some major steel companies, have gone bankrupt. Combine this with increased health costs and low interest earnings of the AML fund and the result is a financing shortfall for the CBF. These factors demonstrate the need for a comprehensive reform of the Coal Act as part of the AML reauthorization.

On several occasions, the Congress has relied on ad hoc appropriations or other measures to provide short-term fixes to the funding problems of the CBF rather than enact comprehensive and bipartisan solutions to the Coal Act. Now is the time for a long-term solution to ensure that the beneficiaries receive the benefits due to them and that companies subject to the Coal Act are able to meet their financial obligations.

I, along with eleven of my House colleagues, have introduced H.R. 3586, the Coal Industry Retiree Health Benefit Stability and Fairness Act, to comprehensively ad-

dress and provide a long-term solution to the problems of the Coal Act. It would address two primary issues: 1) the ability of companies to pre-fund their coal miner retiree health obligations while eliminating the joint and several liabilities on the related entities (not the parent company) of companies subject to the Coal Act; and 2) the reachback tax, which imposes a retroactive burden on companies that have been out of the coal mining business.

Problems stemming from the Coal Act threaten the ability of sound companies to meet their obligations. In particular, the joint and several liabilities created by the Coal Act severely impair the ability of companies to engage in value maximizing asset sales and to efficiently access the capital markets necessary for growing their businesses. Such liabilities unfairly extend to every subsidiary and related company in the corporate family, whether they were ever in the coal mining business or not.

In addition, for more than a decade a group of companies—referred to as reachback companies—have been burdened with an inequitable tax imposed on them by the Coal Act of 1992. In that legislation, Congress mandated that the reachback companies, most of which had been out of the coal mining business for decades, step in and subsidize the financing of such benefits. This financial burden being placed on the reachback companies has driven many into bankruptcy and put others on the brink of financial ruin.

H.R. 3586 proposes a fair solution to these problems by allowing companies to prepay the actuarial value of the total premium liabilities if certain conditions are met, and providing prospective relief to reachback companies saddled with this insidious tax. The legislation would release related companies from the joint and several nature of the liabilities; however, it would hold the parent company jointly and severally liable for the premiums.

Importantly, these provisions would allow a related company to engage in value-added asset sales without the Coal Act liability being attached to the asset. Instead, the liability would remain with the parent company. This would allow the subsidiaries and related entities to expand their businesses and create additional jobs, while also ensuring that the obligations to the CBF are met.

It is vital that the issues relating to the Coal Act be addressed to provide for a comprehensive and long-term solution. I appreciate the Committee's attention to these very important matters. I look forward to working with the Committee to resolve the critical problems faced by both the CBF beneficiaries and the companies caught up in the unintended consequences of the Coal Act.

Mrs. CUBIN. Having no more business before the Committee, the Subcommittee is adjourned.

[Whereupon, at 12:30 p.m., the Subcommittee adjourned.]