

**TESTIMONY OF**

**JOHN A. MASTERSON  
COUNSEL TO THE HONORABLE DAVID D. FREUDENTHAL, GOVERNOR  
STATE OF WYOMING**

**BEFORE THE**

**SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES  
HOUSE COMMITTEE ON RESOURCES**

**BARBARA CUBIN, CHAIRMAN**

**AT ITS HEARING ON  
REAUTHORIZATION OF THE ABANDONED MINE LAND PROGRAM**

**MARCH 30, 2004**

Good Morning Mr. Chairman. My name 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. 3778 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 balance, 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 in 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.

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## **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 health care 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 dollars in reclamation fees into the AML Trust Fund. In return, Wyoming has received about \$520 million dollars, 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 1 and 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 US 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 dollars 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 off-set 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 un-appropriated 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.