

**STATEMENT OF
BRENT WAHLQUIST, DIRECTOR
OFFICE OF SURFACE MINING RECLAMATION AND
ENFORCEMENT
U.S. DEPARTMENT OF THE INTERIOR**

BEFORE THE

**SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS**

ON S. 2448

**TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION
ACT OF 1977 TO MAKE CERTAIN TECHNICAL CORRECTIONS.**

JULY 16, 2008

Mr. Chairman and Distinguished Members of the Committee, thank you for the opportunity to submit testimony on S. 2448, a bill to make certain changes to the 2006 Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This bill would require that funds distributed to certified States and Indian Tribes under Section 411(h) be made as direct payments to those States and Indian Tribes as opposed to using simplified grants for this distribution.

Mr. Chairman, as we explain below, this bill will result in a significant loss to the US Treasury. Further, the bill would create a disparate funding advantage to those states and tribes that have no remaining coal AML problems. Yet addressing those problems was the basic reason for creating and extending the AML fund. Additionally, if these funds are distributed as direct payments, then the Treasury would have to borrow money in advance before States are ready to expend it, thereby allowing states to earn interest on those funds at the expense of the Federal taxpayer. That is not prudent fiscal policy. The bill could also have PAYGO costs. For all of these reasons, the Administration cannot support the bill.

Background

The Office of Surface Mining Reclamation and Enforcement (OSM) has always used grants to distribute Abandoned Mine Land (AML) funds. When grants are used to make disbursements, the funds remain in the US Treasury until they are actually needed to pay obligations by the States and Indian Tribes. Grants also provide controls to ensure that funds are spent for authorized purposes, which is particularly important for grants to uncertified States.

The 2006 Amendments created two new types of Treasury payments to States and Indian tribes: (1) distribution of Treasury funds in lieu of the prior unappropriated state/tribal share balance to all states and tribes over 7 years, starting in FY 2008 (Section 411(h)(1))(prior balance replacement funds), and (2) payments in lieu of future state/tribal share to certified states and tribes, starting in FY 2009 (Section 411(h)(2))(certified in lieu payments.) States and tribes receive funds from Treasury equal to their unappropriated balances so that those unappropriated funds actually remain in the AML fund and continue to earn interest that is paid annually to the United Mine Workers of America (UMWA) health care plans.

As the law is currently written, OSM must continue to use grants to distribute both Treasury and AML funds. Therefore, for FY 2008, OSM used grants to distribute both Treasury and AML funds under the 2006 amendments.

For certified States and Tribes, however, we provided a much simpler process since we do not have a responsibility for approving or disapproving individual expenditures.

In this first year of distribution, certified states reported that this simpler process worked well for them. Wyoming, for example, has already obligated FY 2008 payments for the University of Wyoming School of Energy Resources operating budget, a School of Energy Research gasification facility, and other construction projects. Our proposed rule, published on June 20, 2008 and currently out for public comment (Federal Register/Volume 73, No. 120 / June 20, 2008), is consistent with this simpler process.

S. 2448

S. 2448 would require that the Treasury funds described above be distributed as direct payments to the certified States and Indian tribes. The effect of this requirement is a significant loss to the Treasury. The primary effect of this change is that certified states and tribes would be able to immediately deposit these funds in interest bearing accounts until spent rather than establishing a line of credit through a grant against which certified states and tribes can withdraw funds as needed to meet expenses charged to the grant. The bill does not alter distribution for uncertified States.

The Department has serious concerns with the consequences of the direct payment scheme. The effect of this requirement is a loss to the Treasury. Currently, the unappropriated State and Tribal share balance in the AML fund earns interest and, pursuant to SMCRA, the interest is used to help defray the costs of health care for certain retired coal miners through UMWA health care plans. In 2006, Congress mandated that replacement funds come from the Treasury rather than from the AML fund in order to ensure that the AML fund would not be depleted and would continue to produce interest for UMWA health care payments. By requiring that these replacement payments be paid upfront, we will have to borrow those funds and pay interest on them earlier and in a larger amount which will be in addition to the interest the AML fund is paying for UMWA health care.

We are also concerned that the benefit of earning interest on direct payments would only be available to certified states and tribes that no longer have any coal AML problems to address, while those uncertified states with extensive remaining coal AML problems would not receive this benefit.

Finally, the bill could have PAYGO costs by requiring an immediate outlay of funds for direct payments. In contrast, simplified grants provide funds as needed, so the outlays would take place over time.

For these reasons, the Department cannot support S. 2448.