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SURFACE MINING CONTROL AND RECLAMATION ACT

AUGUST 5, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 2830]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2830) to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ABANDONED MINE RECLAMATION.

(a) RECLAMATION FEE.—Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(6)(A)) is amended by inserting "and section 411(h)(1)" after "paragraphs (1) and (5)".

(b) FILLING VOIDS AND SEALING TUNNELS.—Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting "and section 411(h)(1)" after "section 402(g)".

(c) USE OF FUNDS.—Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by striking "section 403" and inserting "section 402(g)(6), 403, or 409".

PURPOSE

The purpose of S. 2830 is to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects.

BACKGROUND AND NEED

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) was enacted, among other things, to promote the reclamation of abandoned mines that endanger public health and safety and degrade the environment. It created a reclamation program, which is administered by the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior, and is funded by an Abandoned Mine Land (AML) fee assessed on each ton of coal produced. Funds collected under the program are used to reclaim abandoned mine lands, with top priority for protecting public health, safety, general welfare, and property, and restoration of land and water resources adversely affected by past mining practices. The program is largely directed to abandoned coal mine reclamation, but under section 409 of SMCRA (30 U.S.C. 1239), funds have historically been available to address noncoal mine sites. Several western states, including New Mexico, Colorado, and Utah, have traditionally relied on AML funds to reclaim noncoal sites.

The Surface Mining Control and Reclamation Act Amendments of 2006, which was enacted as part of the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109–432), reauthorized collection of the AML fee, which would otherwise have expired. In addition, the 2006 amendments added a provision to section 411 of SMCRA that requires the Secretary of the Interior to pay states and Indian tribes the so-called "unappropriated balance amounts," which were previously allocated, but had not been paid, to the states and tribes. The Department of the Interior, pursuant to a Memorandum Opinion (M–37014) issued by the Solicitor on December 5, 2007, has interpreted the amendment to section 411 to prohibit "uncertified" States and Indian tribes (*i.e.,* States and tribes that have not certified completion of their abandoned coal reclamation work pursuant to section 411(a) of SMCRA with the Secretary's concurrence) to use their "unappropriated balance amounts" provided to them under the AML program to address problems relating to noncoal abandoned mines. This same Memorandum Opinion also limits the ability of uncertified States and Indian tribes to use unappropriated balance amounts under the AML program for deposit into an acid mine drainage abatement and treatment fund.

As previously noted, prior to the enactment of the 2006 amendments, AML funds were available to uncertified States and Indian tribes to reclaim both coal and noncoal sites and western states such as New Mexico, Colorado, and Utah were able to prioritize the use of their AML funds to undertake the most pressing reclamation work on both coal and noncoal mine sites. While activities on noncoal sites have consumed a relatively insignificant portion of the funding provided for the overall AML program, the results in terms of public health and safety at these sites is considerable, and there is significant work yet to be done. Similarly, acid mine drainage continues to pose a significant problem particularly in the Appalachian States where coal mining is prevalent. The 2006 amendment to section 411, as interpreted by the Solicitor, prevents states from allocating their AML funds to address their most pressing needs.

S. 2830 would address this problem by giving uncertified States and Indian tribes flexibility to use unappropriated balance amounts

paid to them pursuant to the 2006 amendments for noncoal reclamation. In addition, uncertified States and Indian tribes would have the flexibility to use such funds for deposit in an acid mine drainage abatement and treatment fund without respect to certain time limitations. The bill addresses those unexpended and unappropriated balance amounts already paid to the States and Indian tribes pursuant to the 2006 amendments, as well as those to be paid pursuant to the 2006 amendments.

LEGISLATIVE HISTORY

S. 2830 was introduced by Senator Bingaman on December 3, 2009, with five original co-sponsors, Senators Bennet, Bennett, Hatch, Mark Udall, and Tom Udall. The Subcommittee on Public Lands and Forests held a hearing on the bill on April 21, 2010. The Committee on Energy and Natural Resources considered the bill and adopted an amendment in the nature of a substitute at its business meeting on June 16, 2010. The Committee ordered S. 2830, as amended, favorably reported at its business meeting on June 21, 2010.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 2830, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2830, the Committee adopted an amendment in the nature of a substitute. The amendment provides that unappropriated balance amounts paid to uncertified States and Indian tribes under the Abandoned Mine Land Program pursuant to the Surface Mining Control and Reclamation Act can be used for acid mine drainage set-aside programs and for noncoal abandoned mine land reclamation.

SECTION-BY-SECTION ANALYSIS

Section 1(a) amends section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act by adding a reference to provide that certain funds made available pursuant to section 411(h)(1) may be received and retained for acid mine drainage abatement in accordance with the subparagraph.

Section 1(b) amends section 409(b) of the Surface Mining Control and Reclamation Act by adding a reference to provide that certain funds made available pursuant to section 411(h) may be used by States and Indian tribes for the purposes of section 409, including noncoal reclamation.

Section 1(c) amends section 411(h)(1)(D)(ii) to provide references to sections 402(g)(6) and 409 to provide that uncertified States and Indian tribes may use funds received under the subparagraph in accordance with those sections.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 2830—A bill to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects

CBO estimates that enacting S. 2830 would reduce direct spending by about $5 million over the 2011–2020 period; therefore, pay-as-you-go procedures would apply. Enacting the legislation would not affect revenues. S. 2830 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Each year, the Office of Surface Mining (OSM) provides more than $300 million in grants and payments to states and Indian tribes to reclaim land and water resources that have been degraded by past mining practices. Because such grants and payments are not subject to annual appropriation, they are considered direct spending. States and tribes that currently have backlogs of coal reclamation projects—so-called noncertified states—are obligated, under current law, to use those grants exclusively for those specific coal projects.

S. 2830 would allow those noncertified states and tribes to use those funds for other types of reclamation projects not related to coal mining. CBO expects this change would increase direct spending in the near term by accelerating spending of reclamation grants. However, that short-term increase would be more than offset by reduced spending in later years because enacting the bill would prolong the certification process for some states. On balance CBO expects that this change would reduce the amount of direct spending by the federal government over the next 10 years.

Under current law, once states and tribes certify that they have completed all outstanding coal reclamation projects, they become eligible for additional payments from OSM. Under S. 2830, if some states and tribes substitute noncoal projects for coal projects in the near term and delay their certification status by at least one year, total direct spending over the next 10 years would be less than anticipated under current law. The number of states and tribes that would be affected and the extent to which they would delay certification are uncertain. However, based on information from OSM and some of the affected states and tribes, CBO estimates that enacting the legislation would reduce direct spending by about $5 million over the 2011–2020 period. Under current law direct spending for these grants and payments is expected to total about $4 billion over that period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 2830 would reduce direct spending from certain payments to states and tribes to reclaim abandoned mines. The changes in the deficit that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 2830, A BILL TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO CLARIFY THAT UNCERTIFIED STATES AND INDIAN TRIBES HAVE THE AUTHORITY TO USE CERTAIN PAYMENTS FOR CERTAIN NONCOAL RECLAMATION PROJECTS, AS REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON JUNE 21, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go	0	1	2	2	−2	−2	−2	−1	−1	−1	−1	1	−5

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2830.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2830, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2830, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at a hearing on S. 2830 on April 21, 2010, which is provided below.

STATEMENT OF GLENDA OWENS, DEPUTY DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DEPARTMENT OF THE INTERIOR

Mister Chairman and Members of the Subcommittee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding S. 2830. I look forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

S. 2830 would allow noncertified states and tribes to use certain SMCRA payments for non-coal reclamation. While we recognize the importance of addressing hardrock mine hazards, we cannot support this bill because it is incon-

sistent with the President's FY 2011 Budget proposal to limit SMCRA payments to high priority coal sites.

The FY 2011 President's Budget includes a proposal to focus AML funds on the high priority coal reclamation sites in order to ensure that the most hazardous issues can be addressed before the AML fee expires. In addition to terminating unrestricted payments to certified states and tribes, the proposal will require all noncertified states to use their funding only for high priority coal reclamation projects.

BACKGROUND

Through SMCRA, Congress established OSM for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an Abandoned Mine Land (AML) program to address the hazards and environmental degradation created by two centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund (Fund). OSM, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, has been using the Fund primarily to reclaim lands and waters adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since FY1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund to defray the cost of providing health care benefits for certain retired coal miners and their dependents. Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, OSM's fee collection authority would have expired August 3, 1992. However, Congress extended the fees and fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990. The Energy Policy Act of 1992 extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

The AML reclamation program was established in response to concern over extensive environmental damage

caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on eligible lands and waters that reflected the top three priorities. The first priority was "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices." The second priority was "the protection of public health, safety, and general welfare from adverse effects of coal mining practices." The third priority was "the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices."

As originally established, the Fund was divided into State or Tribal and Federal shares. Each State or tribe with a Federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The "Secretary's share" of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund, and was allocated into three shares as required by the 1990 amendments to SMCRA. First, OSM allocated 40% of the Secretary's share to "historic coal" funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, OSM allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, that program has not been appropriated AML funds since the mid-1990s.

Last, SMCRA required OSM to allocate 40% to "Federal expense" funds to provide grants to States for emergency programs that abate sudden dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund OSM operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands may develop a State program for reclamation of abandoned mines. The Secretary may approve the State reclamation program and fund it. At the time the 2006 amendments were enacted, 23 States received annual

AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo, Hopi and Crow Tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, States and Indian tribes that had not certified completion of reclamation of their abandoned coal lands could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe.

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006 (Public Law 109–432). The 2006 amendments revised Title IV of SMCRA to make significant changes to the reclamation fee and the AML program. One change extended OSM's reclamation fee collection authority through September 30, 2021. The statutory fee rates were reduced by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021.

The Fund allocation formula was also changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. Instead, amounts that would have been distributed as State share for fee collections for certified States are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation is further increased by the amount that previously was allocated to RAMP.

Since 2006, the Department has interpreted the language of SMCRA section 411(h) to require that OSM use grants to provide funds to eligible States and Indian tribes and to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation.

S. 2830

Under SMCRA, states can use some of the AML funds they receive for non-coal reclamation. S. 2830 would amend SMCRA to allow noncertified states and tribes to use their mandatory funds received under Section 411(h)(1) from their unappropriated AML Fund balance for reclamation activities on non-coal mine sites. Noncertified states and tribes can already use the funds they receive from the "state share" and "historic coal" formulas for noncoal reclamation.

When Secretary Salazar appeared before the Committee on Energy and Natural Resources to testify about the FY 2011 President's Budget for the Department of the Interior, he noted that in developing a balanced budget request for FY 2011, tough choices had to be made. The budget, in

addition to eliminating unrestricted payments to certified states, also proposes limiting the use of AML payments to priority coal reclamation projects. The Department cannot support S. 2830 because it is inconsistent with the Fiscal Year 2011 budget.

In an effort to focus the AML program on coal reclamation before the reclamation fee terminates, the President's FY 2011 budget proposes to restrict the use of AML funds by noncertified states to high priority coal reclamation. Because S. 2830 is inconsistent with the Administration's goal of ensuring expeditious coal reclamation, we cannot support this bill.

While we recognize the dangers that abandoned hard rock mines can pose, AML funding needs to be focused on the highest priority problems Congress originally identified in 1977. The challenging economic conditions, coupled with this Administration's commitment to fiscal responsibility, only heighten the need for AML funds to be devoted to the highest priority coal problems. We note that the administration has continued to invest in AML, both through the Bureau of Land Management and National Park Service American Recovery and Reinvestment Act of 2009 funding and the FY 2011 President's Budget to address hardrock mine reclamation on Federal Lands.

We share your concern about non-coal abandoned mine sites and would be happy to share the expertise gained administering SMCRA and work with the Congress and this committee as we seek to address abandoned non-coal mine problems.

Thank you for the opportunity to appear before the Subcommittee today and testify on this bill. I look forward to working with the Subcommittee to ensure that the Nation's abandoned mine lands are adequately reclaimed.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

Public Law 95–87, as amended

AN ACT TO provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Mining Control and Reclamation Act of 1977".

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RECLAMATION FEE

SEC. 402. (a) * * *

(g) ALLOCATION OF FUNDS.—(1) * * *

(6)(A) Any State with an approved abandoned mine reclamation program pursuant to section 405 may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 30 percent of the total of the grants made annually to the State under paragraphs (1) and (5) *and section 411(h)(1)* if those amounts are deposited into an acid mine drainage abatement and treatment fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

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FILLING VOIDS AND SEALING TUNNELS

SEC. 409. (a) * * *

(b) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g) *and section 411(h)(1).*

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SEC. 411. CERTIFICATION.

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(h) PAYMENTS TO STATES AND INDIAN TRIBES.—

(1) IN GENERAL.—

(D) USE OF FUNDS.—

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(ii) UNCERTIFIED STATES AND INDIAN TRIBES.—A State or Indian tribe that has not made a certification under subsection (a) in which the Secretary has concurred shall use any amounts provided under this paragraph for the purposes described in [section 403] *section 402(g)(6), 403, or 409.*

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