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SENATE

{ REPORT
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ABANDONED MINE RECLAMATION

APRIL 22, 2013.—Ordered to be printed

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

R E P O R T

[To accompany S. 222]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 222) 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 non-coal reclamation projects and acid mine remediation programs, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 222 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 non-coal reclamation projects and for acid mine drainage set-aside programs.

BACKGROUND AND NEED

The Tax Relief and Health Care Act of 2006 (Public Law 109-432) contained amendments to the Surface Mining Control and Reclamation Act (SMCRA; 30 U.S.C. 1201, et seq.) reauthorizing collection of an Abandoned Mine Land (AML) fee on coal produced in the United States and making certain modifications to the AML program. Under this program, which is administered by Office of Surface Mining Reclamation and Enforcement of the Department of the Interior, funds are expended 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 been available to address non-coal mine sites. A review of the legislative history of this provision and the long-standing administrative interpretation of section 409 reveals that the section is intended to address “non-coal mine reclamation” on abandoned mine lands.

In addition, section 402(g)(6) of SMCRA (30 U.S.C. 1232(g)(6)) provides that States with approved abandoned mine land programs may receive and retain funds for deposit into an acid mine drainage and treatment fund for use in accordance with the paragraph without regard to a 3-year time limitation required by the Act. Section 405(k) makes this provision applicable to Indian tribes as well as to States.

Pursuant to a Memorandum Opinion (M-37014), issued by the Department of the Interior’s Solicitor on December 5, 2007, the Department has interpreted the amendments in a manner that limits the ability of States and Indian tribes to use certain funds (“unappropriated balance amounts”) provided to them under the AML program to address problems relating to noncoal abandoned mines. This same Memorandum Opinion limits the ability of States and Indian tribes to use unappropriated balance amounts under the AML program for deposit into an acid mine drainage abatement and treatment fund without respect to the time limitation on the use of the funds. Funds had been available for both of these purposes prior to the 2006 amendments. In accordance with section 409 of SMCRA, western states such as New Mexico, Colorado, and Utah, have prioritized the use of 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 in these states 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.

S. 222 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 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. 222 was introduced by Senator Udall of New Mexico on February 4, 2013, with three original co-sponsors, Senators Bennet, Udall of Colorado, and Heinrich. A companion bill, H.R. 488 was introduced by Representative Pearce on February 4, 2013. S. 222 is identical to S. 897, which was introduced by Senator Bingaman during the 112th Congress on May 5, 2011. The Subcommittee on Public Lands and Forests held a hearing on the S. 897 on May 18,

2011 (S. Hrg. 112–39), and the bill was ordered reported favorably by the Committee on July 14, 2011 (S. Rept. 112–63). Similar legislation (S. 2830) was also reported by the Committee in the 111th Congress (S. Rept. 111–264). At its business meeting on March 14, 2013, the Committee on Energy and Natural Resources ordered S. 222 to be reported favorably without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on March 14, 2013, by majority vote of a quorum present recommends that the Senate pass S. 222.

The rollcall vote on prereporting the measure was 14 yeas, 4 nays, as follows:

YEAS	NAYS
Mr. Wyden	Ms. Landrieu
Mr. Johnson	Mr. Manchin
Ms. Cantwell	Mr. Barrasso*
Mr. Sanders*	Mr. Hoeven
Ms. Stabenow	
Mr. Udall	
Mr. Coons*	
Mr. Schatz	
Mr. Heinrich	
Ms. Murkowski	
Mr. Lee*	
Mr. Scott	
Mr. Alexander*	
Mr. Portman*	

*Indicates vote by proxy.

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. 222—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 and acid mine remediation programs

CBO estimates that enacting S. 222 would have no significant net impact on the federal budget over the 2014–2023 period. Because enacting the legislation could affect direct spending (increasing it in some years and decreasing it in others), pay-as-you-go procedures apply. Enacting S. 222 would not affect revenues. The bill 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 \$200 million in grants and payments to states and Indian tribes to reclaim land and water resources that have been degraded by past mining activities. 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 uncertified states—are obligated under current law to use a portion of those grants exclusively for certain coal projects.

S. 222 would allow uncertified states and tribes to use those funds for other types of reclamation projects not related to coal mining. CBO expects that this change would increase direct spending—by up to \$2 million a year—in the near term by accelerating spending of reclamation grants. However, that short-term increase would be offset by reduced spending in later years. On balance, CBO expects that implementing the legislation would result in no net change in direct spending over the 2014–2023 period.

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. 222, some states and tribes may substitute noncoal projects for coal projects in the near term and delay their certification status, which would delay certain payments that would increase direct spending under current law. Based on information from OSM and some of the affected states and tribes, CBO expects that no uncertified states will become certified over the next 10 years, and CBO estimates that any delay in making payments to states that become certified would not affect direct spending over the 2014–2023 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2013– 2018	2013– 2023
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	1	2	2	–2	–2	–1	0	0	0	0	1	0

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. 222.

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. 222, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 222, 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

Executive Communications were not requested by the Committee in the 113th Congress. The following Administration testimony references similar legislation introduced in the 112th Congress.

The views of the Administration were included in testimony received by the Committee at a hearing on S. 897 on May 18, 2011, which is provided below.

STATEMENT OF THE 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. 897, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The OSM looks forward to working with you on matters relating to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

S. 897 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 inconsistent with the President's FY 2012 Budget proposal to limit funding derived from the abandoned mine lands fee on coal production to the reclamation of coal sites that pose the most danger to public health and safety and/or damage to the environment.

The FY 2012 President's Budget includes a proposal to focus AML funds on the critical coal reclamation sites in order to ensure that the most dangerous and environmentally damaging coal sites can be addressed before the

AML fee expires in ten years. In addition to terminating unrestricted payments to certified states and tribes that have already cleaned up their abandoned coal mines, the proposal will competitively allocate funding for use on these hazardous and environmentally damaging coal reclamation projects. Recognizing the importance of addressing abandoned hardrock mines nationwide, additionally, the President's FY 2012 budget would build off these reforms to the coal AML program and create a parallel program for hardrock AML reclamation in order to address those sites. This proposal would ensure that the industries whose historic practices created abandoned mines bear the costs of addressing these hazards by paying a reclamation fee on production.

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 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 and extended OSM's reclamation fee collection authority through September 30, 2021.

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 reclama-

tion 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 could develop a State program for reclamation of abandoned mines. The Secretary determines whether to approve and fund the State reclamation program. 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 Nation, and 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. In addition, noncertified States were allowed to deposit up to ten percent of their AML grant funds into a state acid mine drainage set aside account to abate and treat acid mine drainage caused by coal mining.

The 2006 amendments reduced the statutory fee rates by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012, and by 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 certified States from the AML fund are distributed as historic coal funds. The RAMP share was eliminated, and the historic coal allocation was further increased by the amount that previously was allocated to RAMP. In addition, the amount that noncertified States could set aside for acid mine drainage abatement and treatment was increased to 30 percent of a State's State share and historic coal share funds.

The Amendments also created two new types of payments from the General Treasury under section 411(h). Both certified and noncertified states receive payments equal to their portion of the unappropriated balance of the AML fund that existed at the time the amendments were passed, known as "prior balance funds". Certified states and tribes also receive a payment, known as the "in lieu"

payment, equal to 50% of the fees collected in their borders the prior year.

Though the other sources of funding to noncertified states and tribes are available for a variety of purposes under the statute, since 2006, the Department has interpreted the language of SMCRA section 411(h) to preclude noncertified states and Indian tribes from using funds that they receive under that section for noncoal reclamation or for deposit into a state acid mine drainage account.

S. 897

Under SMCRA, noncertified states can use “State share” and “historic coal” funds for noncoal reclamation and deposit into state acid mine drainage set aside accounts, which are considered lower priority hazards associated with AML sites. S. 897 would amend SMCRA to allow these states to also use their prior balance funds, which they receive under Section 411(h)(1), for noncoal reclamation and for deposit into state acid mine drainage set-aside accounts. In other words, S. 897 would allow prior balance replacement funds, which are now focused on the reclamation of coal sites in noncertified States, to be used for other purposes: namely, noncoal reclamation and deposit into State acid mine drainage set aside accounts.

In an effort to focus the OSM’s AML program on coal reclamation, the President’s FY 2012 budget proposes to revise SMCRA to competitively allocate AML funds to ensure that the most dangerous and environmentally damaging coal AML sites are reclaimed before the reclamation fee terminates. Because S. 897 is inconsistent with the Administration’s goal of ensuring expeditious coal reclamation through the existing AML Fund, we cannot support this bill.

We share this Subcommittee’s interest in ensuring that abandoned hardrock mines also are addressed. In order to accomplish this goal, we support the creation of a parallel hardrock AML program, funded through a fee on hardrock production to fund the reclamation of hardrock mine sites nationwide, which the FY 2012 President’s budget proposes.

Currently, there is no hardrock reclamation fee similar to the one established by SMCRA to reclaim abandoned coal mine sites. This leaves States, Tribes, and Federal land managers to address these sites within their budgets or using other sources of funding, such as SMCRA’s reclamation funds when possible. To hold each industry responsible for the actions of its predecessors, the President’s FY 2012 budget proposes a new reclamation fee on hardrock production. Once the fee is established, OSM would be responsible for collecting this fee, based on its expertise in collecting the coal reclamation fee. The Department of the Interior’s Bureau of Land Management would be responsible for allocating and distributing the receipts, using the proposed competitive allocation program.

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.

* * * * *

RECLAMATION FEE

SEC. 402. 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) LIMITATIONS ON FUNDS.—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.*

