

**AML ADVISORY COMMITTEE**  
**Minutes**  
**Semi-Annual Meeting**  
**September 5, 2007**

A regular meeting of the AML Advisory Committee was called to order at the Powell River Project Pavilion at 3:00 p.m. pursuant to the notice sent to all committee members.

The following members and visitors were present: Jerry Baird, Alpha Natural Resources; Eddie Hannah, Lonesome Pine Soil and Water; Phil Shelton, UVA College at Wise; Wade Biddix United States Department of Agriculture; Ian Dye, Office of Surface Mining; Van Weaver, Acting Regional Director OSM Pittsburgh; Earl Bandy, OSM Field Office Director Big Stone Gap; Glenn Graham, Lonesome Pine Soil and Water; Carol Doss, Upper Tennessee Roundtable; Roger Williams, Richard Davis, and Butch Lambert, Department of Mines, Minerals and Energy.

Members absent: Carol Doss, Upper Tennessee Roundtable; Martha Podren, Tennessee Valley Authority; and Gerald Ramsey, Consolidation Coal Company.

Jerry Baird presided, Roger Williams recorded the proceedings of the meeting, and Dawn Bays transcribed the minutes. A motion was made by Eddie Hannah to accept the minutes, seconded by Phil Shelton. Minutes of the September, 2006 meeting were approved unanimously.

**DMLR– Butch Lambert**

On behalf of Mines, Minerals and Energy, Division of Mine Land Reclamation Butch Lambert welcomed everyone for another year. Opportunities are coming up this year such as the reauthorization of the AML fund. This is a kind of bitter sweet for us because of the amount of funds that will be available to Virginia in the next coming years which is good, but the bitter part is on the staffing end. We are not sure how we will get it all done and get it all spent. That is a challenge for us. We are putting together some committees now to look at ways to be able to take care of those funds with some sites that really need it and that is a good thing. A lot of challenges on the types of projects we pick and how we are going to do those projects. We are going to have to be creative, and we are going to have start thinking outside the box even more.

We often hear about Virginia being one state that never stays in a box. Our friends at OSM can tell you that. We are always knocking on their door with new ideas and they are wondering how you came up with that. Our AG thinks that every situation that comes up we should have a template to go by, but we don't. That's how we are going to do with our upcoming funds we are getting. We are excited even though it will be a challenge. We are also excited about additional partnering opportunities that will

arise. We hope this meeting will kick some of those ideas off. Roger will talk about that. Looking forward to next year and hope it isn't as short as this one has been. Welcome!

### **DMLR PROGRAM UPDATE – Roger Williams**

The big news is that we have extended life in the AML program. Late last year, December 20, 2006, Congress finally passed a bill reauthorizing the AML Program called Public Law 109- 432. It gave everybody everything. It is a very expensive bill.

Some of the major changes we will go over follows:

The program was extended for 15 years. It is now set to sunset on September 30, 2021. Many think that this will be the final date of the AML program. The fee on coal production is going to drop at the end of this month. It has been 35 cents a ton on surface and 15 cents a ton on underground. Starting October 1, 2007, there will be a 10 percent reduction and it will drop to 31 ½ cents on surface mined coal and 13.5 cents on underground coal. It will stay at that rate until 2013 when it will drop another 10 percent. The fees at that point will be 28 cents ton on surface and 12 cents on underground. It will stay at that rate until 2021.

Beginning in 2008, the states that have certified completion of all of their coal related problems will no longer get their 50 percent state share monies. That money will be transferred to the old historic coal share for distribution to states with remaining coal problems. That's where a lot of our additional monies will come. Since a lot of that comes from Wyoming and the figures are astronomical, it will result in a big transfer of AML fees from the west to the east. They will make the western certified states whole by transferring royalties from the Mineral Leasing Act to offset their 50 percent share.

The Rural Abandoned Mine Land Program did finally die on December 20, 2006. That was 20 percent of the total fund. This 20 percent was also moved over to increase the historic production share. That money is being used to help increase the monies that all the eastern states with remaining coal problems will receive. As far as the distribution, there is a big change there. Once it is fully implemented approximately 83 percent of the annual fees collections will be distributed to the states outside the appropriations process. That's a key change.

If we get into a budget decline or the President says he is going to cut the budget 5 percent or 10 percent, this money will be off budget and won't be affected. Only about 17 percent would be controlled by the annual Presidential Budget. It guarantees that we get the AML fund revenues of the preceding fiscal year, excluding interest and donations. Also guaranteed are additional amounts to ensure a new minimal program funding level. The old two million a year minimum will go to three million a year. The states will only get 50 percent of the additional monies those first two years and then in 2010 and 2011 they will up it to 75 percent of the full amount. By 2012 we are suppose to be ready to get the full appropriation.

The cap of up to 30 percent annual AML funding for water projects has been removed. Theoretically, we could steer all the AML funding toward water. I will share some information later on the funding of water projects and what we have on the table to give you a more in-depth look where we are on water funding.

Under the old law funding for acid mine drainage (AMD) was limited to 10 percent of states annual AML appropriations. The new law ups that to 30 percent. That is another potential growth area. In our state we are moving aggressively in that area, but that is another area we need to look at to see what makes sense in funding those needs going forward.

I want to speak a little about the Reclamation Project Priority because I think this will be a big area that OSM and the states are going to struggle with in moving forward. It affects project selection, funding, and how we prioritize projects in the future. The old I's, II's, III's, IV's, V's have been dramatically changed. The new law eliminated two entire categories of priorities, which were priority IV and V. Four was the protection repair, replacement, construction or enhancement of public facilities adversely affected by coal mining practices. Priority V was development of publicly owned land adversely affected by coal mining. The other change was in I and II definitions, the general welfare classification was stricken which generally covered priority III's. It reclassified the old priority III's which were the environmental problems. Any priority III lands or waters that are adjacent to past, present, or future priority I's and II's will now be classified as a priority I and II. That is a major change.

Our view of traditional priority III's is going to have to take a different form. It is giving us a lot of flexibility in trying to include a lot of areas that in the past we would not have looked at for funding. We will have the option to look more at a watershed basis, which is what a lot of other agencies we are trying to partner with like.

There is also a provision that requires strict adherence to the priorities. The Secretary has to ensure strict compliance with that until states certify completion of coal sites. I do not think we will ever be certified. There is also a provision allowing us to initiate priority III reclamation projects before completing all I's and II's but only in a situation where the priority III is performed in conjunction with priority I and II projects. This adds a little more flexibility about adding in priority III's.

Other changes include the United Mine Workers Combined Benefit Fund. They are going to bail out the combined benefit fund as a major part of the reauthorization.

Another area of opportunity for us in partnering with the coal industry is with getting reclamation of AML sites through re-mining. The new law did several things in the way of re-mining incentives. Before the reauthorization, there was a provision in law providing some incentives for reduced revegetation responsibility periods. The new law reinstated the incentives and removed expiration dates. It also authorized the Secretary to adopt some additional re-mining incentives and they named several. One was reclamation fee waivers and the use of AML funds to provide financial assurance in lieu of

performance bonds for remaining operations. This will require regulations. It limits fee waivers to the amount of the reclamation cost and puts some limits on what can be offered.

I have two charts showing hypothetical funding over the life of the extended AML program. We currently have in our inventory a little over \$104,000,00 of unfunded priority I's and II's. Our prior state share balance is about \$29,000,000. I think 2007 will be our lean year with \$3.4 million and then you can see in 2008 we begin to ramp up in funding. Then it goes to 75 percent in 2010 and 2011. This will put us around \$10,000,000. We will not get the full funding until 2012. Then we jump to \$13 million and \$13.5 million in 2013. Then it will gradually go back down. Over that 10-year period we are projected to get \$109,000,000. The second sheet is a 19-year projection. All this depends on coal production, states finishing up I's and II's, not adding to the inventory and a lot of wild cards that can dramatically affect this. The 19-year provision is a little less rosie. This was done in December, but it shows that Virginia will receive approximately \$160,000,000 over the life of the program.

I am passing a chart showing the funding impacts to states if a coal company lawsuit on payment of AML fees on export coal is successful. We have about \$29,000,000 in the fund as of September, 2006. Paid on exports was \$17.2 million, which is 58 percent of the monies that will increase our monies the chart you saw. This could potentially go back as a result of the lawsuit. At the end of October this year, OSM is to do the accounting to see what the balances are. If the lawsuit isn't settled by next month, I think there is a legal case that if the suit isn't settled by then, any future claims shouldn't come out of the fund.

I have put together a summary chart for AML funded water. This shows all the water projects we have funded with AML money since day one. There are about 28 total projects in the amount of \$19,500,000 serving a little over 7,000 customers. A lot of this money was leveraged with other money like ARC money, community block development money so actually were able to double/triple the amount of money that was put on these water projects. We have done a good job in diversifying where the money went. We funded water projects in all the active coalfield counties, and probably put the bulk of money in Buchanan and Wise Counties, which are the two biggest coal producers.

Two weeks ago I met with two counties and a planning district commission on a major water project proposed from Haysi to Honaker. This is a plot out of the eligible underground mines in the service area. It will involve Russell, Buchanan, and Dickenson Counties. They are looking now at \$1.2 million this coming year from AML. This will give you some idea of how the stakeholders we deal with look at AML water project funding. These are some of the last big systems to be put in. The only way these projects will happen is with AML dollars.

Next I will give an update on the joint DMME/CORPS AML project in Lee County. We are nearing completion on Phase II construction in the Lick Branch area on an approximately \$2 million AMD treatment system.

### **DMLR – Richard Davis**

As part of OSM's National AML Awards, this year they decided to have a small project award for projects costing \$100,000 or less for competition. This year Virginia has won OSM's Category II National Award for the Buchanan County Park Enhancement project. Roger will be receiving this award during the National AML Conference in October.

It has been a work in progress for a number years and Buchanan County is continuing progress at this site. We did our project and eliminated about 3,200 feet of highwall. We did this as an AML Enhancement Project. We contracted with Buchanan County IDA, they sub-contracted the work out to Motivation Coal, which had a large surface mine nearby. When Motivation wasn't using their big dozers they would bring them to the AML site and eliminate 3,200 feet of highwall. This was our first experience with AML Enhancement. We put about \$100,000 into the project. Cost savings was over \$200,000 in getting this highwall eliminated.

The good thing that followed was that a soccer field on the mined land in the underserved community was developed. We had a post reclamation land use for recreation, particularly a soccer field. In 2004, the Buchanan County Youth Soccer League had their first practice on the field. There was a soccer initiative tour on this site as well as other sites where we had proposed reclaiming of abandoned mine lands for soccer fields. Several in attendance here today were on this tour; Ian, Butch and Roger. During the project we assisted Buchanan County with writing a soccer grant to the Soccer Foundation. Buchanan County did not get the grant, but later was successful in getting a soccer start-up kit, which were things kids needed to go out and play soccer. That was a non-competitive award to Buchanan County. Over the past several years, the county has taken the 20 acres of flat land that we left for them and implemented several other land uses such as a kid's park.

We received news last week from the Virginia Dept. of Conservation and Recreation. We submitted two grant requests for priority III reclamation one for the Hurricane Fork Gob Pile and there is a grant pending from DCR of \$140,000 to DMME to reclaim this site and an adjacent gob pile. There is a 30-day comment period on the grant awards from DCR and we are confident at the end of the 30-day period we will enter in with negotiations with DCR to secure that \$140,000.

In partnership with the Upper Tennessee River Roundtable, DMME wrote into their grant request a request for \$50,000 to reclaim some priority III lands in the North Fork of Powell watershed. This is also an area where we are looking at working with NRCS. This is a site that is not eligible for AML money, this is a site that was an illegal operation and we have exhausted every opportunity we can, so we have had to look at other sources and with the Upper Tennessee River Roundtable it looks like we will get \$50,000 to reclaim this site.

We have several partnerships going right now. We have two sites scheduled for reclamation in partnership with the Lonesome Pine Soil and Water Conservation District. Also, some work in the Harman area in partnership with the Big Sandy River Basin Coalition on some priority III sites.

The Carbon Sequestration Project is funded to the tune of a half million dollars from Dominion, the large power producer out of Richmond. Benny Wampler was instrumental in securing this award from Dominion to the Nature Conservancy, and we will probably break ground on this project next month. Tress should be in the ground next February on this 76 acres site in Russell County.

ARRI is the Appalachian Regional Reforestation Initiative. A different way of looking at planting trees on active mines and on reclaimed mines as well. Where we can, we implement these ARRI guidelines about less compaction, less non-competitive ground cover, and planting hardwood species. One thing we have done for the past three years with the OSM and VA Dept. of Forestry, we have held an Arbor Day on the first or second Friday in April. This year we planted trees on a reclaimed AML site on the Powell River Project, we had over 170 students from Wise and Dickenson Counties. We planted 1,500 hardwood seedlings, gave everyone a tee shirt and lunch. Through this we are getting the word out about ARRI. These students may be the ones doing surface mining five – ten years from now. This will help get some in a career of natural resource management.

### **NRCS RAMP PROGRAM and PL566 PROGRAM – Wade Biddix**

We have been working with DMME, Lee County, and Daniel Boone District in the development of a watershed plan on the north fork of the Powell River. It will address the AMD issues as well as critical eroding areas in trying to improve water quality in the north fork of the Powell. A key partner has been the CORP. They took several of the larger AMD sites and there were 44 sites left which were smaller and still contributing some acid mine drainage or critical erosion sedimentation issues. We have developed a plan for funding through the small watershed program that we have. Out of the 44 sites, we determined we could handle 39 of those 44. Some of those have natural buffers, wetlands, and beaver ponds that were already helping remediate some of the problems.

Some of the projects benefits would be if we could treat the whole watershed on these 39 sites, we would improve fisheries on about 23 miles of fisheries in that watershed. We would have some positives but unmeasured effects on groundwater. Improved habitat for threatened and endangered species in that watershed. Improve wildlife habitat on 56 acres of land. We would reduce about 252 tons per year of sediment that would be delivered to the streams. Improve stream water quality on 18.4 miles of stream, reduce AMD of about 315 gallons of AMD per minute, and build almost eight acres of wetlands.

We requested in May from our National Headquarters an exception to the policy that why should we only treat five sites when we have looked at an overall watershed, let's do the entire 39 sites. We were suddenly in a larger issue nationwide, a lot of projects coming in requesting environmental exceptions for funding and there were some other dam rehabilitation projects coming in as well. We had a change in Chief's not too long ago in our agency. He is asking what is wrong with our criteria that all these exception requests are being initiated nationwide. We are in a holding pattern now. The bottom line is, it does look like the project is moving forward. We are into a new farm bill and the House side has passed it, the Senate side is yet to take it up and supposedly will in September. It seems watersheds for now are on the down turn in this Congress.

In the Wildlife Habitat Incentives Program with the number of threatened and endangered species that we have and improvement to the fisheries, there is a good possibility that we might be able to tap into some of that money. With the plan we have, we have worked all the angles. We just need to show case it and get it out there for some grants and some special projects. Together we can fund this project somehow. In the meantime, I am hung up and can't get it through the planning process until they make a decision.

Last year there was a Cooperative Conservation Partnership Initiative effort that went out that all agencies could put forth proposals. We got one funded in Virginia on the south fork of the Shenandoah. They had fish kills there and we funded the Dept. of Conservation and Recreation to do a rapid watershed assessment trying to look at fish kill issues. The Cooperative Conservation Partnership Initiative is an opportunity to look at some ecological restoration and AMD on a watershed basis to help fund some of the planning. It seems to be the thing of the future to look at for these partnership efforts.

Our agency as a whole is going through some restructuring. One area that will affect you is the Clintwood office servicing Wise, Buchanan and Dickenson Counties is going to close in December. That will be serviced out of the Lebanon office.

## **COMMITTEE BUSINESS**

Chairman Eddie Baird opened the floor up for additional comments from the members. New OSM Field Office Director, Earl Bandy, and Van Weaver, Acting Regional Director OSM Pittsburgh, thanked the group for the program updates and the opportunity to participate.

Roger Williams brought up an additional area for discussion. DMME wants to form an AML work group to focus on ideas and partnering opportunities to help DMME spend the anticipated additional AML monies in an effective and efficient manner. The group envisioned would include members of the AML Advisory Committee, along with other stakeholders. DMME has formed an internal work group to plan for expenditure of

additional AML monies. We want each of these groups to work together to develop ideas and strategies to maximize the use of Virginia's AML money going forward. The group was asked for their support and willingness to serve and participate in this process. There was unanimous support for this idea from the committee.

The next meeting of the AML Advisory Committee will be announced at a later date. A notification of the next meeting will be sent to each member.

Meeting adjourned.

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Roger L. Williams,  
DMME Abandoned Mine Land Services Manager

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