

# Subcommittee on Energy and Mineral Resources

Doug Lamborn, Chairman

Hearing Memorandum

March 21, 2016

**To:** All, Subcommittee on Energy and Mineral Resource Committee Members

**From:** Majority Committee Staff  
Subcommittee on Energy and Mineral Resources, x5-9297

**Hearing:** Oversight Hearing entitled “*The Impact of the President’s FY 2017 Budget and Legislative Proposals for the Office of Surface Mining on Private Sector Job Creation, Domestic Energy Production, State Programs and Deficit Reduction.*”

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The House Energy and Mineral Resources Subcommittee will hold a budget oversight hearing on the FY 2017 budget proposals put forward by the U.S. Office of Surface Mining Reclamation and Enforcement (OSMRE). The hearing will take place on **Wednesday, March 23<sup>rd</sup> at 9:00 a.m. in Room 1324 Longworth House Office Building**. This hearing will focus on agency priorities and accountability, appropriate use of taxpayer and ratepayer spending, as well as the future missions of OSMRE.

## Policy Overview

- The national debt currently exceeds **\$19 trillion**, and the Obama Administration’s overall federal budget, which includes increasing OSMRE’s budget to over **\$1 billion**. OSMRE proposes no new solutions and instead is doubling down on past practices.
- The OSMRE’s budget request for FY17 increases federal taxes and fees and shifts federal spending in a manner that dis-incentivizes energy production on both federal and private lands. The proposal moves America further away from energy security.
- The budget’s “Power + Plan” would seek to redirect hundreds of millions of dollars which have already been designated for the purpose of reclaiming historic mine lands that pose the most serious threat to human safety and health.
- The rewrites of the stream buffer zone rule have cost the tax payers millions of dollars.
- The OSMRE wants to hire new staff and unilaterally ramp-up regulations, without the input from states that have primacy over the regulation of coal mining, for an already overburdened industry.

## Invited Witness

*Mr. Joseph Pizarchik*

Director, Office of Surface Mining Reclamation and Enforcement

U.S. Department of the Interior

Washington, D.C.

## **Budget Requests**

The Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87, and spoken “Smack-Rah”) was the first federal environmental statute to regulate a specific industry as opposed to a specific type of pollution. The law created the Office of Surface Mining Reclamation and Enforcement (OSMRE) and its two major programs:

- Title IV of SMCRA created an abandoned mine land (AML) reclamation program, funded by fees that operators pay on each ton of coal produced, to reclaim land and water resources adversely affected by coal mines abandoned before August 3, 1977. Appropriation to this program supports the reclamation programs of states and OSMRE. The request is for FY 2017 is \$30,375,000. A net decrease of \$86,928,000 from the FY 2016 enacted level of funding.
- Title V of SMCRA created a regulatory and technology program to ensure that surface coal mining operations initiated or in existence after the effective date of the Act are conducted and reclaimed in an environmentally sound manner. Appropriations to this program finances regulatory functions administered either by the States or OSMRE. The Administration requests \$127,650,000 for FY 2017. This is a net increase of \$4,297,000 compared to the FY 2016 enacted level of funding.

OSMRE’s budget request for FY 2017 is **\$157.9 million**, an apparent \$82.6 million decrease from the FY 2016 enacted level. However, after correcting for a \$90 million dollar community revitalization pilot project, it is an increase of \$7.4 million over the FY 2016 normalized enacted level. OSMRE requests an up-staffing to **515 FTEs** in 2017, an increase of 27 FTEs from the 2016 estimated level.<sup>1</sup> A breakdown of OSMRE’s proposed FY 2017 budget changes can be seen in Table 1 below.

The budget proposes to increase mandatory funding from \$646,044,000 enacted in 2016 to \$914,424,000 in FY 2017.<sup>2</sup>

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<sup>1</sup> [https://www.doi.gov/sites/doi.gov/files/uploads/FY2017\\_OSM\\_Budget\\_Justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OSM_Budget_Justification.pdf) (Pg. 35)

<sup>2</sup> [https://www.doi.gov/sites/doi.gov/files/uploads/FY2017\\_OSM\\_Budget\\_Justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OSM_Budget_Justification.pdf) (pg. 8)

**Table 1: OSMRE FY2017 Budget Change Overview (In actual Dollars)**

Requested Change	Program Description	2017 FTE/ Increase	Budget Ref.
<b>Regulation and Technology</b>			
\$2,250,000	Increase Technical Assistance: Activities include development of policy/guidance documents for technical issues, and onsite review and guidance on the application of regulations to specific permits.	7	pg. 82
\$1,199,000	Applied Science Projects: Funding to advance technologies related to coal mining.		pg. 83
\$2,500,000	GeoMine Project: For expansion of the Coal Mining Geographic Information System, an interactive geospatial data sharing system for State and Federal Agencies for coal mining activities and decisions.	2	pg. 82
\$1,000,000	Reforestation Initiative: Funds one Coordinator and 6 to 8 students to support the Appalachian Regional Reforestation Initiative.	3	pg. 84
\$1,766,000	Improve Implementation of Laws and Support the States/Tribes: Would be used to improve implementation of laws and support to States/Tribes, including processing State program amendments.	6	pg. 60
\$1,000,000	NEPA Compliance: Recent case law has increased the workload associated with developing and reviewing EISs and EAs.	3	pg. 61
\$350,000	Solicitor Support of AML Activities: Would support 2.5 FTEs in the Solicitor's Office for issues specific to coal mining.		pg. 61
\$205,000	Program Monitoring: Would support review of: evaluation, and monitoring of civil penalty, bond forfeiture, settlement agreements, collections, and grants.		pg. 110
(\$3,129,000)	State and Tribal Grants: Would reduce funding to States and Tribes used to run State and Tribal regulatory programs and are matched by the State/Tribe.		pg. 60
(\$1,860,000)	Offsetting Collections: In Fed. Program States/Tribal Lands OSMRE would increase collections from operators to offset its costs for reviewing, administering, and enforcing permits. (Rule to change fee structure is being finalized.)		pg. 61
(\$750,000)	Electronic Permitting: Supports information sharing between Federal and State parties for permitting review. Funding provided in FY 2016 enacted budget is sufficient to continue this work.		pg. 84
(\$234,000)	For Fixed Costs to cover increases in personnel costs, and decreases in workers compensation, GSA rentals, and DOI Working Capital Fund.		pg. 23
<b>\$4,297,000</b>	<b>Regulation and Technology Subtotal</b>	<b>345/21</b>	
<b>Abandoned Mine Reclamation</b>			
\$1,478,000	Increase Technical Assistance: Activities include development of policy/guidance documents for technical issues, and onsite review and guidance on the application of regulations to specific permits.	5	pg. 82
\$799,000	Enhance Mine Map Repository: Digitizing efforts of underground mine maps.	1	pg. 83
\$525,000	Applied Science Projects: Funding to advance technologies related to AML reclamation by investing in science projects and studies.		pg. 83
\$287,000	Solicitor Support of AML Activities: Would support 2.5 FTEs in the Solicitor's Office for issues specific to coal mining.		pg. 42
(\$90,000,000)	AML Economic Development Pilot Project: FY 2016 Enacted level included funding for a pilot project in three Appalachian States with the greatest unfunded AML.		pg. 42
(\$17,000)	For Fixed Costs to cover increases in personnel costs, and decreases in workers compensation, GSA rentals, and DOI Working Capital Fund		pg. 24
<b>(\$86,928,000)</b>	<b>Abandoned Mine Reclamation Subtotal</b>	<b>143/6</b>	
<b>(\$82,631,000)</b>	<b>Total</b>	<b>488/27</b>	

## **Five Legislative Proposals affect Title IV programs**

Reclamation of abandoned mines is conducted under the authority of Title IV of SMCRA using a fee levied on coal production. These funds are distributed to the States and Tribes through annual grants through mandatory appropriations. OSMRE proposes several changes which would affect this process. The proposed plan would reduce the normal disbursement by \$61 million in FY 2017 by eliminating payments to Certified Programs and increase it by \$200 million for non-certified states in FY 2017. These changes cannot occur without legislative action.

### **The President’s “Power + Plan”**

The President’s budget includes several proposals that would require legislative changes to SMCRA that further undermine the compromise reached in 2006 that allowed for the collection of the Abandoned Mine Land (AML) fees through FY 2021. The POWER + Plan, ‘investing in communities impacted by energy development,’ proposes to take \$1 billion from the ‘remaining unappropriated balance’ of OSM’s AML Fund to facilitate the revitalization of economically depressed coalfield communities.<sup>3</sup> The unappropriated \$1 billion will most likely come from the reallocated prior balance money that is designated by law (2006 amendments to SMCRA) for payout to uncertified states starting in 2023. H.R. 4456 (introduced by Congressman Hal Rogers) mirrors the proposed POWER + Plan. It is uncertain how “sustainable revitalization” and “economic eligibility factors” will be added to existing site selection criteria.

AML sites are categorized by risk and severity. Priority 1: Protection of public health, safety, and property from Extreme Danger. Priority 2: Protection of public health, safety and property. Priority 3: Degraded land and water resources. AML funding is granted with preference to Priority 1 and 2 sites, and Priority 3 sites in uncertified states can only be reclaimed in conjunction with 1 or 2 sites. The Power + Plan upends the AML program laid out in SMCRA which is designed to address those abandoned mine sites that pose an imminent or serious threat to human health and safety.

The FY 2016 Omnibus Appropriations Act included a \$90 million economic and community development pilot project and that will be implemented over the next year. To date, the states of Kentucky, Pennsylvania and West Virginia have not received approval of their respective grant applications. OSMRE has provided limited guidance about how the program will be executed, particularly with regard to consultation with stakeholders, grant administration, and eligibility of projects.

### **Higher AML Fees**

OSMRE proposes legislation to modify the 2006 amendments to the Surface Mining Control and Reclamation Act, and raise the fee levied on coal production.

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<sup>3</sup> [https://www.doi.gov/sites/doi.gov/files/uploads/2017\\_Highlights\\_Book.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/2017_Highlights_Book.pdf) (DH-68)

#### Current Fee Structure Authorized through 2021<sup>4</sup>

- Surface-mined coal (except lignite) –28 cents per ton
- Underground-mined coal (except lignite) –12 cents per ton
- Lignite – 8 cents per ton

#### Proposed Fee Structure<sup>5</sup>

- Surface-mined coal (except lignite) – 35 cents per ton
- Underground-mined coal (except lignite) – 15 cents per ton
- Lignite – 10 cents per ton

#### **Hardrock AML Program**

The budget also includes a proposed AML fee on all hardrock mines for the purpose of establishing an AML program for abandoned hardrock sites. It is estimated that this fee would levy \$1.8 billion for this purpose.<sup>6</sup>

#### **Eliminate Funding to Certified States**

OSMRE proposes to end permanent appropriations payments to certified states providing a savings of \$520 million over the next ten years (this would affect 5 states and 3 tribal nations). Wyoming would be impacted the most by this proposal. Currently Wyoming coal operations contribute more than half of all the AML fees collected (56%). If payments to Wyoming and the other Certified states were eliminated it would be highly unlikely that the AML program would be reauthorized beyond FY 2021. This proposal may be at odds with the aforementioned Hardrock AML program as payments to Certified States are often used on such hardrock reclamation projects.

#### **UMWA Health and Pension**

OSMRE proposes to distribute an additional \$375 million in FY 2017 alone to the United Mine Workers of America retiree health and pension plans. These programs cover more than 100,000 workers and are approaching insolvency.<sup>7</sup>

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<sup>4</sup> <https://sscr.osmre.gov/public/Handbook/Documents/payerhandbook2013.htm>

<sup>5</sup> [https://www.doi.gov/sites/doi.gov/files/uploads/FY2017\\_OSM\\_Budget\\_Justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OSM_Budget_Justification.pdf) (pg. 143)

<sup>6</sup> Statement of Sally Jewell, Secretary of the Interior Before the House Committee on Natural Resources on the 2016 President's Budget Request. March 5, 2015.

<sup>7</sup> [https://www.doi.gov/sites/doi.gov/files/uploads/FY2017\\_OSM\\_Budget\\_Justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OSM_Budget_Justification.pdf) (pg.144)