

**DIVISION OF NATURAL RESOURCES  
NAVAJO AML RECLAMATION PROGRAM  
BRIEFING REPORT ON AML FUNDING ISSUE  
May 2009**

**INTRODUCTION**

The Navajo Nation Abandoned Mine Lands (Navajo AML) Program of the Division of Natural Resources hereby provides information on our AML funding issue. The new (Obama) administration proposes to eliminate certified AML programs under the provisions of 2006 Amendments of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Because Navajo AML is certified with abandoned coal mine reclamation, we would not be entitled to any future federal treasury funds starting in FY2010, thus ending our program.

**BACKGROUND INFORMATION**

Navajo AML was established in August 1988 with approval of the Navajo Reclamation Plan and Code by the Navajo Nation and the Secretary of Interior. The purpose of the Navajo AML Program is to fulfill requirements of Public Law 95-87, SMCRA of 1977," that address abandoned mine lands problems. The plan allows Navajo AML to implement, administer, and conduct reclamation of abandoned coal and mineral (such as uranium and copper) mines abandoned prior to August 3, 1977 on the Navajo Nation. The Office of Surface Mining Reclamation and Enforcement (OSM) has federal oversight responsibility. Under the OSM definition of Indian Lands, the Navajo AML can only address AML sites that are located on "Tribal Trust" lands.

Through SMCRA, reclamation fees were collected from respective State and Tribal active coal mine operations, and reclamation funds for abandoned mine lands were established to address land and water resources impacted by abandoned mines for which there were no continuing responsible parties.

SMCRA was amended in 1990 to include reclamation of abandoned non-coal mines such as uranium and copper which constitutes a hazard to the public health and safety. Section 411 of SMCRA was added for implementation of Public Facility Projects (PFP's) for communities impacted by mining activities, under the condition that States/Tribes be certified with completion of coal mine reclamation.

In 1994, the Secretary of Interior concurred with the Navajo AML program certification that all eligible coal mines were reclaimed. The certification authorized Navajo AML to proceed with addressing other SMCRA projects, primarily non-coal mines. In 1994, the Navajo Reclamation Code/Plan was amended pursuant to the SMCRA amendments of 1990.

In December 2006, Congress amended SMCRA under the Tax Relief and Health Care Act of 2006. The Act includes major revisions to AML funding distribution process. Certified States and Tribes would receive their funds from the US Treasury Fund Account "in lieu" of their unappropriated AML Trust Fund balance. The Navajo Nation had about \$34 million in the AML Trust Fund in 2006. Navajo AML would receive the balance of about \$34 million in subsequent seven (7) yearly appropriations; thus far, funding has been granted in FY2008 and FY2009.

To date, Navajo AML has reclaimed over 1,200 of an estimated 1,300 mine sites that include coal, uranium, copper and sand/gravel. Since most AML problem areas with physical hazards have been addressed, Navajo AML amended the Navajo Reclamation Plan to include other SMCRA eligible projects such as PFP's. Chapters and communities impacted by present and past mining activities are eligible for PFP (AML) funding through a competitive Request for Proposals process. So far, the

Navajo Nation and Resources Committee of the Navajo Nation Council have approved 54 PFP's since FY2002.

## ISSUE

The new Obama Administration plans to eliminate AML funding to programs that are certified with coal reclamation pursuant to the FY2010 Federal Budget Proposal. This proposed funding initiative would severely impact services on the Navajo Nation, as the Navajo AML closes its beneficial program. Through the 2006 SMCRA Amendments, Navajo AML and other certified States/Tribal AML programs would receive their unappropriated AML funds from the US Treasury Account. No other funds are available for the certified States/Tribes through the 2006 SMCRA Amendments. The non-certified states receive their funding from the reclamation fees collected from nationwide coal operations and their un-appropriated AML Trust Fund. The unappropriated AML funds estimated at \$34 million are **owed and due** back to the Navajo Nation via the Navajo AML Program. These funds were accumulated through the collection of reclamation fees from Navajo coal reserves. The federal government was slow in appropriating these funds back to the respective State and Tribal AML Programs. The Navajo Nation needs to ensure these funds are appropriately paid back to the respective certified States and Tribes.

Pursuant to OSM's Budget Justification and Performance Information, Fiscal Year 2010, it's quoted under the Indian Lands Program, page 70-71 that ***"the Federal trust responsibility is a legal obligation under which the United States has charged itself with moral obligations of the highest responsibility and trust toward Indian Tribes. OSM ensures that the lands and trust resources of Federally-recognized Tribes and their members are identified, conserved, and protected. In fulfilling these responsibilities, OSM operates within a government-to-government relationship with Tribes..."*** This concept definitely applies to the Navajo Nation. Thus, OSM and Department of the Interior must continue to grant the Tribal AML funds based on 2006 SMCRA Amendments. There are only three (3) Tribal AML Programs affected: Navajo, Hopi and Crow. The certified States are Wyoming, Texas, Montana, and Louisiana.

## IMPACTS

Navajo AML is a major partner with federal, state, tribal and chapter entities to complete and manage environmental, public facility and infrastructure projects. Most entities rely on our administrative and technical abilities as well as leverage funding in completing these projects. The Navajo Nation has a great need in addressing environmental problems, community and infrastructure projects. Through our SMCRA reauthorization initiatives, we emphasized to Congress and the Federal government the importance of continued funding for these Navajo Nation projects.

The Navajo Nation has a negative legacy of uranium mining and SMCRA has shown to be a positive and beneficial mechanism in addressing problems related to uranium mines. Navajo AML has been efficient and cost effective in maximizing its ability to address the problems associated with non-coal abandoned mines and would eliminate further environmental work should funding be eliminated.

Navajo AML is at the forefront of uranium mine reclamation in the United States as recognized by OSM through evaluation reports and annual Abandoned Mine Lands reclamation awards. Navajo AML has received five (5) OSM awards, including one (1) "National Award. This national recognition clearly illustrates the benefits and the high level of accomplishments of the Navajo AML Program, far from the "wasteful spending" characterization.

AML reclamation initiatives, in particular the long-term plans, require resolutions. Navajo AML continues to receive reports from communities on newly discovered AML problems that require immediate attention. Other Federal and State programs continue to request technical assistance from Navajo AML based on our experience in abandoned uranium mine reclamation within the "Tribal

Trust” lands. AML sites within allotted lands will require resolution and partnership with the New Mexico AML Program and other environmental programs. The New Mexico AML Program is responsible for AML reclamation within the allotted lands but they are a non-certified, minimum funded State, thus have limited resources to address AML problems within these areas. Since New Mexico AML Program is non-certified pursuant to SMCRA, they have to focus on coal related mine problems. Navajo people live within these allotted lands and continue to be impacted by abandoned uranium mines.

## **RECOMMENDATION**

Navajo AML’s recommendation is the certified Tribes and States continue to receive their funds pursuant to the 2006 SCMRA Amendments. These funds are owed and due to the Navajo AML program since they originate from Navajo Nation resources. The Navajo AML program has shown their ability to effectively administer their program in an efficient and cost effective manner. The funding needs to continue to ensure that Navajo people are benefiting from the provisions of SMCRA.

In conclusion, through partnership initiatives, Navajo AML will be proactive in dealing with the legacy of coal and uranium mining activities within the Navajo Nation and to collaborate on infrastructure development initiatives through PFP. The legacy of mining the Navajo Nation’s natural resources has benefited the United State’s National Security in the past and present. The SMCRA funding is essential for our program operations and projects. The communities continue to benefit from the project funding.