Interstate Mining Compact Commission

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EXECUTIVE DIRECTOR

GREGORY E. CONRAD

July 11, 2012

The Honorable John Barrasso
U.S. Senate
Room 307 Dirksen SOB
Washington, DC 20510

The Honorable Michael B. Enzi
U.S. Senate
Room 179-A Russell SOB
Washington, DC 20510

The Honorable Cynthia Lummis
U.S. House of Representatives
Room 113 CHOB
Washington, DC 20515

Dear Senators Barrasso and Enzi and Representative Lummis:

As you know, included in the passage of the Surface Transportation Bill (H.R. 4348) by Congress last week was an offset related to the Secure Rural Schools and Community Self-determination Program and the Payment in Lieu of Taxes Program. More specifically, Section 100125 of the bill amended Section 411(h) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to limit total annual abandoned mine land (AML) program payments to a certified state or Indian tribe to no more than $15 million. This will most directly impact the state of Wyoming, resulting in reduced payments of approximately $718 million over the remaining ten years of the AML program. Based on our understanding of this amendment to SMCRA, it will also reduce payments to uncertified states with historic coal production by nearly $550 million over the life of the AML program.

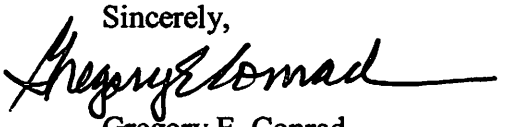
Pursuant to Section 411(h)(4)(A) of SMCRA, an equivalent amount of money that is ***paid*** to a certified state or tribe "in lieu of" its state share (pursuant to section 411(h)(2)) shall be reallocated to the historic coal production share under section 402(g)(5) of the Act. Thus, pursuant to the amendment worked by H.R. 4348, the amount of funding that is not paid to Wyoming in lieu of its state share will be forfeited for annual historic production share funding. Whether this amount of money will be restored in later years remains to be seen, but we are concerned that this will not be the case. Examples of annual impacts to those states most dramatically impacted by this reduction in historic production share funding include Pennsylvania ($17.8 million), West Virginia ($10.2 million), Illinois ($5.5 million), Kentucky ($5.4 million), Ohio ($3.4 million), Indiana

($1.8 million), Virginia ($1.6 million) and Alabama ($1.5 million). Upwards of 13 other states will also be affected representing an additional $5 million.[1]

Given the complexity of this seemingly "simple" amendment to SMCRA, our analysis of impacts continues. There are a host of procedural and logistical questions concerning its interconnectedness with other provisions of the Act which will likely require a rulemaking by the Office of Surface Mining to fully sort out. Regardless, it is clear that this amendment upsets the balance of interests and the delicate compromise that was struck in 2006 to extend the life of the AML program. As a result, it will cost the nation significant AML reclamation work and the valuable jobs associated with it. The amendment also sets a pernicious precedent for future raids of the AML Trust Fund, thereby detracting from the congressionally intended purposes of the Fund.

We commend you for your efforts to seek a reversal of this debilitating amendment of SMCRA and to restore funding for both certified and uncertified states and tribes.

Sincerely,



Gregory E. Conrad
Executive Director

cc. All Commissioners

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[1] The numbers presented here are calculated as follows: Using the FY 2011 distribution tables prepared by the Office of Surface Mining in December, 2011 (the latest available), Wyoming was targeted to receive $67.3 million in "in lieu" funding pursuant to section 411(h)(2) of SMCRA. On the reasonable interpretation that the reallocation for historic coal funding under section 411(h)(4) can only be based on the amount of money ***actually paid*** to a certified state as "in lieu of" funding, this reallocation would have been reduced by $52.3 million ($67.3 million - $15 million (the cap provided under the new amendment) = $52.3 million). This represents approximately 1/3 of the historic coal fund allocation for FY 2011 for uncertified states under the FY 2011 distribution. The numbers presented above reflect the 1/3 reduction in these funds and over ten years would result in a $550 million cut for historic coal funding.