

**AML ADVISORY COMMITTEE**  
**Minutes**  
**Semi-Annual Meeting**  
**September 6, 2005**

A regular meeting of the AML Advisory Committee was called to order by Jerry Baird 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: Phil Shelton, UVA College at Wise; Ian Dye, Office of Surface Mining; Jerry Baird, Alpha Natural Resources; Glenn Graham, retiree NRCS; Wade Biddix, United States Department of Agriculture; Roger Williams, Benny Wampler, and Mike Abbott, Department of Mines, Minerals and Energy.

Members absent: Eddie Hannah, Lonesome Pine Soil and Water; Gerald Ramsey, Consolidation Coal Company; Carol Doss, Upper Tennessee River Roundtable; Shannon O'Quinn, Tennessee Valley Authority.

Jerry Baird presided, Roger Williams recorded the proceedings of the meeting, and Susie Garrett transcribed the minutes. Minutes of the May 5, 2005 meeting were reviewed and unanimously approved.

**DMLR Program Update - Roger Williams**

The AML program is not dead, but maybe on life support might be the best way to term it. Congress adjourned in August. In early June of this year, things really got heated up on AML authorization. A bunch of folks began talking about finally working on some legislation to try to extend the program. In previous years, the House had taken the lead on this and nothing happened on the Senate side. This year, it is just the opposite. The Senate was determined to do something on the AML bill. A lot of the driver was the energy bill, which ultimately passed. The Senate finally delivered its own version of the energy bill. At that time there was a lot of talk about having the AML reauthorization in it. The bottom line is given the concerns that the AML extension would unduly complicate the passage of the energy bill as well as some budget issues with OMB, the AML reauthorization got stricken from the energy bill. The energy bill passed without it.

Prior to that effort, there were five states that got together to see if they could develop a compromise on the east-west issue on AML reauthorization. The five states were Ohio, Pennsylvania, West Virginia, Kentucky and Wyoming. These big coal producer states are the ones that have the most to lose or gain from all of this. They had worked up potential amendments to the Cubin-Rahall bill that had been introduced in two prior sessions of Congress but never did go anywhere.

They worked on some interesting compromises on this issue of trying to recognize the need to keep the money in the same area where the taxes are generated, such as Wyoming, as well as balancing the needs of Pennsylvania where peak production has passed, but where most of the problems are. They approached Cubin and Rahall, the sponsors of the bill, to see if they could get their support on it. They got a very lukewarm response. As a result, the Group of Five proposal, as they collectively called it, failed to get sponsored.

Congress came back into session after recess around July 4. At that time, there was an effort by a group of coal companies to see if they could craft a compromise bill that would be acceptable to all parties. There were three major coal companies that came together on that - Peabody, Arch and Consol. They drafted a proposal that was coined, the Peabody Proposal. It looks very much like the Cubin-Rahall bill. It has a phased payout of the unappropriated state share balances, along with expanded provisions on bailing out the combined benefit for the United Mine Workers (UMWA). Apparently, the industry had gotten together with the UMWA, and when the expanded combined benefit provision was included, they were able to get the UMWA to come on board to support this compromise. Most of that action was targeted on the House side, where Cubin and Rahall are, and they made a concerted effort, primarily Cubin from Wyoming made an attempt to garner interest in the Peabody Proposal as a potential amendment to the energy bill.

But, two things stood in the way. The big one was opposition from Representative Peterson from Pennsylvania, who introduced his bill that was basically a mirror of the Bush Administration proposal that called for transfer of most of Wyoming's money back to fix the problems in the east, which as we know was totally unacceptable to the west. The other thing that came up was the payout option of all those unappropriated balances. OMB didn't like that because it broke all the budget agreements, added to the deficit, and was a real budget buster. In the final analysis, Mrs. Cubin abandoned her efforts to add the AML amendment to the energy bill. So, the energy bill passed without anything on the AML reauthorization

About the same time they were passing the energy bill they were also considering voting on a final version of the Interior appropriations bill for 2006. Incorporated into that bill was an extension of the fee collection. This makes the third time that has happened through the appropriations process. It was a fee extension through the appropriations process that was introduced by Senator Byrd of West Virginia that extended the fee collections through June 30, 2006. As it stands now, AML fee collection will be good through June 30, 2006.

The national AML association is still staying active and still working to try to understand legislation on both sides. We've crafted different proposals and options. We are trying to get in a position to respond to the various proposals that are coming out. Bob Penn heard Representative Peterson speak on this. Ian Dye said Representative Peterson's primary opposition to the Cubin-Rahill bill was the bail out of the combined fund. He said, where do we stop if we pick up the miners? Is the airline industry next or the autoworkers? We just can't afford to continue doing that. He is a major player and he said they will not take another step without his approval. He looks forward to a debate

on the issues on whether to return money to where it comes from or whether to divert it to the AML program. He feels he is a sure-fired winner if it goes to public debate.

The question was asked, was one of the main points of the Peabody proposal to take all the funds that had already been collected and put them on a payout schedule. The big winner on that is Wyoming because some time ago they had over \$300 million setting in their account that had not been appropriated by Congress.

The problem is if they try to pay that out over five or ten years, you are talking about major budget impact. The OMB is saying they don't see how they can afford this payout. But Wyoming is insistent that they get their money back. They want to use it for infrastructure and lots of needs on the state side, and they say it came from their state and they want to keep it in their state. They don't want to see it diverted back east.

The other thing is they want to expand the benefits for the UMWA. Right now it is reported to be in very critical shape. There are even more orphaned miners and widows on that fund, so the fund is hemorrhaging as far as the money that it needs, and the interest from the AML fund, which has been transferred is no longer able to support it without some major influx of money - big money. A lot of people are questioning whether the AML fund is the right way to do it. Of course, the coal companies are concerned that if they do away with the AML tax the mine benefit will go under, and then Congress will come back to reinstitute another tax on them just to bail out the miners' benefits.

### **Litigation**

I want to share with you an article I got from the Charleston Gazette. I mentioned a lawsuit briefly at the last meeting that is in West Virginia right now. The coal companies have sued West Virginia over the severance tax issue. There are several big coal companies involved in that, but the bottom line is federal law under a commerce clause prohibits state governments from imposing any tax or duty on imports or exports. What they are saying is that the counties coal severance taxes are illegal under the commerce clause for coal that is exported.

Arguments on the case will be heard in the West Virginia Supreme Court September 20, 2005. If the coal companies win, West Virginia must repay the coal companies between \$400 - \$500 million for taxes paid since 1997, plus interest. In addition, the state and the 55 counties in the state would lose about \$45 million a year from three different severance taxes. It could potentially render the AML tax on export coal as illegal under this clause, too, which would further complicate this whole issue.

There are several states that have severance taxes: Virginia, New Mexico, Montana and South Dakota. It's a very important case. They say Kanawha County uses these taxes to support fourteen volunteer fire departments, food bank, county water and clean-up and all that. Coal companies suing are Consolidated Coal, Laurel Run Mining, Arch, Mid-Vol Leasing, Coastal Coal-West Virginia, Elk Run Coal (a Massey subsidiary), and several others in that area. Whatever is decided will probably be appealed to the U.S. Supreme Court. That could be a landmark case that could affect the

AML program as well as other issues in the counties. The question was asked, what the reasoning was for selecting 1997. Not sure, but probably the statute of limitations, five years from when they filed the suit.

### **Richmond Coal Basin**

Since early August Richmond papers have been running a lot of articles on some AML problems we have been having in the Richmond basin. We have not had a lot of rain and we have not had emergencies in Southwest Virginia like we normally do. However, after Hurricane Isabel, which brought record rainfall and floods out in the Richmond area, we are seeing a lot of subsidence issues develop over these really old coal mines in the Richmond basin. Sinkholes are appearing around people's homes and in drainage areas. We have worked on three sites up there, and we are getting covered up with inquiries since the media coverage. People who have a hole near the road or in their yard call and want to know if it could be coal mining. There is hardly a day goes by that we don't get an inquiry from somebody in the Richmond basin wanting to know if they could be on coal. We have to research it to see if they are in the coal basin. Fortunately, most of them have been outside of the coal basin, but we have had to do two projects and we are getting ready to start a third one. It will probably be another grouting project. We are finding mine voids anywhere from five feet to 11 feet, maybe down 50 - 60 feet. The last site we looked at they had mined naturally occurring coke seams.

A couple of weeks ago they were digging for a swimming pool in western Henrico County and opened up a mine shaft. TV crews went out and covered the situation and it was the lead story on the evening news in Richmond. This sent the neighborhood into a frenzy and our phones rang off the hook for three or four days with people concerned because they have a depression or hole in their yard. We are investigating all these and responding.

DMME plans to write all the coalfield counties in the Richmond basin basically telling them that there is so much new development over known areas where mine works are that immediate action is needed. We are basically telling them that this program is very tenuous and we can no longer guarantee that we are going to have the resources from AML to address all these problems. We are sharing information with them and will be glad to give them technical assistance. However, if people go in and put new developments over known mine areas we are not going to provide assistance for such problems.

We were aware of one area in Henrico County that had literally hundreds of pits and depressions on it. I went up and looked at it 10-15 years ago and it is now the last track that has not been developed with a big subdivision. They just announced that a company is going in and will put houses all over the top of this track of land. It's about 200 acres, just south of the James Rivers. We really don't know what's in there. Someone said some of these contractors have actually covered some of these shafts with plywood and covered them over.

On the first project DMME reclaimed, Ashburg, we put 1,200 cubic yards of grout in. That one cost us around \$300,000 of emergency money. We think the second

one will be a little smaller. All we are doing is the immediate area where active subsidence is occurring. We're not trying to take on anything outside of that. We are drawing the scope of the projects as narrowly defined as we can to reduce costs. The second one, even at reduced scope, will probably require \$100,000 worth of grout.

### **Valley Coalfields**

Near Blacksburg in Coal Branch Hollow AML is working to seal an old mine. The two voids are about 1,000 feet apart. We are going in and taking riprap and backfilling old mine portals that go in on a real steep angle. We are packing it with dirt and putting in an impermeable liner. This will prevent stream flow from entering the mine and causing the stream to dry up. The Corps of Engineers is pleased that we are going to restore the stream. We should be finished by the end of this month. This one is in an area where Montgomery County is developing fairly fast, and this is an area where there are a lot of public visitations.

### **Southwest Virginia Coalfields**

Here in the southwest we are doing a lot of AML enhancement projects. We are getting a lot of interest on old refuse piles with the coal prices. We were able to get Middle Fork in the Herald/Nora area reclaimed at no cost. They have totally removed it. One of the requirements is if they take on one of these old gob piles, there it is a risk and a reward. If they move more than 5,000 tons, they have to reclaim the whole site.

We have one in the coal camps above Appalachia, in Osaka, that we have just started on. It is a fairly small pile. It's on some of Westmoreland's old property. We do all the agency consultation and do it as an AML contract rather than a permit. The cost of permitting and where they are located would make it impossible for them to meet the stringent regulatory requirements.

The question was asked if the companies provide the engineers to design it. Yes, they design and AML approves it. We have a standard contract language; minimum sediment and erosion control plans. The question was asked, if AML has a good inventory of all these sites. Pretty much, but we have people coming to us on some that are revegetated.

### **NRCS - RAMP & PL 566 Program - Wade Biddix**

The funding situation is a little bit better under NRCS's Public Law 566 than it was at one time at last report. We still don't have a budget. There have been several budgets proposed from the House side and the Senate side for watershed planning, operations, and rehab. On the planning side, funding was about \$10 million a year. It went down to \$7 million, and now the House is proposing about level funding, but the Senate side has gone down to \$5 million.

The planning side doesn't look good from the standpoint of the North Fork-Powell Project. We were looking hopefully to get some funding to go in there and do some planning next year. We have a request in, but we don't know how that will pan out.

As I reported last time, we did enter our request a little differently. The previous year we entered it as a new planning start and since we did a public meeting and a few things, we changed it a little this year saying that it is an ongoing planning effort. Rather than a new start, maybe they will fund an ongoing project before they would fund a new start.

Following the 1993 floods in the mid west they pulled off about \$100 million to help restore some of the emergency work in the mid west and they never restored it. They left it about \$100 million and it is slowly dwindling down. It went from \$87 million to \$75 million. Now both sides are proposing \$60 million, so the operational end is going down.

Our rehab program where we go in and rehabilitate dams to bring them up to current design and safety standards looks like where the funding will go in future years. The Senate side is about level funding. The House side is about \$20 million more. So, even if we get the middle of the road of those two, it will be more than we have ever had in the Rehab program. So, that is looking positive. Right now we are finishing up a project in Henry County. It's about a \$2.5 million project to rehab one dam near Martinsville. We are finishing three dams in Augusta County. Tomorrow night we have a public meeting in Fairfax on Pohead Creek. There are four dams there we are starting. There is a lot of effort and interest in dam rehab in Virginia.

The RAMP program has not had any funding since 1995. It doesn't look good that this program will ever come back.

Regarding the North Fork of the Powell River, we are hoping to get some funding so we can go in and look at acid mine seeps and portals and areas that are smaller than the Ely Creek areas. Also, the eroded areas that might need to be stabilized. Trying to deal on the whole watershed basis. That is what we are hoping to do, but it takes money to do planning and to implement it. The planning side and the operation side is affected. So we don't know what will happen here. This is our top priority for planning this year, so if we get any money at all, hopefully it will be in that area. If you don't get a budget you will just get a continuing resolution. For planning this year in Virginia, we got \$11,000. A continuing resolution will give you nothing, so we can't even work off a continuing resolution thinking we might get funding. Typically, we will get \$80,000 - \$100,000 that we can use to do planning in the watershed. Even with the continuing resolution we didn't get any money at all this year. We are waiting and hoping we will get funded entering it as an existing on-going planning. A question was asked, is the Healthy Forest Reserve Program new. They are trying to develop some reserve areas that they can say are a pristine forest and let's try to preserve it. A question was asked about the Ground and Surface Water Conservation listed on the handout. This is a new one, so we don't really know about it. A question was asked about the Conservation Security Program. This is a new program that is almost replacing the subsidy programs where they give farmers incentives to continue to do well and even improve and enhance their ongoing activities, i.e., nutrient management, bio-fuels. Last year was our first year in the Conservation Security Program in Virginia. We had one on the Rappahannock side, the Shenandoah Valley. They just announced two new ones - North Fork of the Shenandoah and the Wicomico Basin. They are the only two watersheds in Virginia that will get funded under this program this year.

## **Committee Business**

Roger Williams - When Shannon O'Quinn notified us that he wouldn't be able to attend today's meeting, he suggested that we make everyone aware that we do have some Water Quality Improvement Act (WQIA) funds available. Shannon was suggesting that we find some priority 3 sites, primarily in the Upper Powell, the North Fork of the Powell, and the Guest River that might total up to about \$50,000. He thinks they will be asking for applications in November of this year. He thinks we have a good chance of securing some WQIA funds if we can come up with some good Priority 3 sites in those watersheds. We may be able to get some matching or left over money from TVA. We have been able to do quite a few little priority 3 sites in the Powell River watershed.

We've also done some tree planting with the reforestation initiative. We are going to continue with some minimal funding off the AML program on tree planting and reforestation. We have done several of those and participated in Arbor Day. On some of the priority 3 sites all we really need to do is plant some hardy trees that will survive in the surface mine materials. We had a tree planting program this spring. We planted a variety of trees and we have about 90% survival on the trees that we planted this year.

## **Benny Wampler**

Jeff Jarrett, OSM Director, was nominated to be the Assistant Secretary of the Department of Energy in the fossil fuel area. It will probably be the first of the year before he moves over there. Jeff has been a real proponent in getting AML reauthorization in the midst of trying to work out the problems with east and west. We will sorely miss him in that arena and the Title V program as well.

Meeting adjourned.

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Roger L. Williams  
DMME Abandoned Mine Land Services Manager