

IMCC 2017 Annual Meeting Scheduled for Williamsburg, Virginia

The Interstate Mining Compact Commission (IMCC) will hold its 2017 Mid-Year Meeting at the Kingsmill, beautifully situated on the James River in historic Williamsburg, Virginia, from April 2 - 5. Those who plan to attend are encouraged to register with IMCC and make room reservations at the Kingsmill as soon as possible. A registration form with hotel information is included with this newsletter.

A welcome reception will take place on the evening of Sunday, April 2. Virginia's Deputy Secretary of Commerce and Trade, Hayes Framme, will provide a welcome address the morning of April 3, prior to the IMCC Standing Committee meetings commencing. The following committees will meet jointly during the day on April 3 and 4: the Coal Environmental Affairs and Abandoned Mine Lands Committees; and the Noncoal Environmental Affairs and Mine Safety and Health Committees. The detailed itinerary and order for the meetings is currently under development.

A social event is being planned for the evening of April 3, and the annual awards banquet and reception will be held the evening of Tuesday, April 4. IMCC's Annual National Reclamation Awards, Minerals Education Awards, and Mine Safety and Health Training Awards will be presented during the banquet.

The IMCC Resolutions and Finance and Administrative Committee meetings will be held the morning of Wednesday, April 5. The Executive Commission Annual Business meeting will follow immediately and will conclude the annual meeting.

More information will be posted on IMCC's website as it becomes available at www.imcc.isa.us (Click on the "Conferences" tab).

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us

**A Newsletter
Published by the
Interstate Mining
Compact Commission**

Upcoming Meetings:

IMCC 2017 Annual Meeting
April 2 - 5, 2017
The Kingsmill
Williamsburg, Virginia

For more information on IMCC Meetings as it becomes available, visit our website: www.imcc.isa.us and click on the "Conferences" tab. Some presentations from IMCC Meetings and Workshops can also be viewed on the website at the "Conferences" tab. Copies of IMCC's Compact Newsletter are available on the website by clicking on the "Publications" tab.

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Reminder: February 1 Deadline for IMCC 2017 Awards Program Nominations

Nominations for the Interstate Mining Compact Commission's (IMCC) 2017 Kenes C. Bowling National Reclamation Awards, 2017 National Minerals Education Awards, and 2017 Mine Safety and Health Training Awards must be received in the IMCC office by February 1. The criteria, deadlines, and nomination forms for all three awards have been distributed to the IMCC member states. The awards will be presented at the Annual Awards Banquet in conjunction with IMCC's Annual Meeting in Williamsburg, Virginia on April 4, 2017.

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us

IMCC Submits Reports to Trump/Pence Administration Transition Team

The Interstate Mining Compact Commission (IMCC) submitted several reports to the Trump/Pence Administration Transition Team in early December addressing issues of concern to state governments in the mining and environmental protection arena.

In a report to the U.S. Environmental Protection Agency (EPA) Transition Team, IMCC discussed the expansive use of Clean Water Act (CWA) veto authority by EPA; CWA liability protections for Good Samaritans; and EPA's recently signed CERCLA 108(b) proposed rule on financial assurance for hardrock mining, which is expected to be published in the Federal Register by early January of 2017.

IMCC's report to the U.S. Department of Labor Transition Team discussed the cooperative and ongoing working relationship and Memorandum of Understanding that is in place between the IMCC and the Mine Safety and Health Administration. The report also addressed several areas of current and future concern related to the implementation of state and federal responsibilities under mine safety and health laws, including: coal waste impoundment inspections; accident notification and investigations; certification/decertification/recertification of miners; mine rescue contests; funding for education and training; MSHA jurisdiction at abandoned mine land (AML) reclamation sites that are remediated pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA); and MSHA's authority under sections 103(j) and (k) of the Mine Act to prevent state personnel from entering a mine after an accident.

In its extensive report to the U.S. Department of Interior (DOI) Transition Team, IMCC discussed the state/federal partnership under SMCRA, including implementation of state regulatory programs for active and abandoned coal mines, and federal oversight of these programs by the Office of Surface Mining Reclamation and Enforcement (OSMRE). The report emphasized the importance of restoring a well-functioning state/federal partnership, and addressed several key issues related to Title V regulatory programs under SMCRA, including: the Office of Surface Mining Reclamation and Enforcement's (OSMRE) technical assistance and training role; funding for state regulatory programs; the Stream Protection Rule; bonding for coal mining; increased use of Ten-Day Notices (TDNs) in federal enforcement; OSMRE rulemakings concerning blasting; placement of coal combustion residues at mine sites; dam safety; underground mine mapping; remaining incentives; federal consistency and jurisdictional disputes; three-year permit termination requirements; and temporary cessation of mining. The report also addressed key AML issues related to Title IV under SMCRA, including: reauthorization of SMCRA Title IV fee collection authority, which is set to expire in 2021; sequestration of AML grants; certified state AML funding; minimum program AML funding; AML emergency program funding; and economic revitalization proposals in Congress, including the Abandoned Mine Lands Economical Revitalization (AMLER) proposal as part of the Obama Administration's Power Plus Plan, and draft bill H.R. 4456, "Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act". Additionally, the report addressed several active mining issues of concern that fall under the purview of the Bureau of Land Management (BLM) in DOI, including: federal coal leasing policy and Secretarial Order 3338 imposing a moratorium on coal leasing while a three-year review of the program is conducted by BLM; mine planning and National Environmental Policy Act (NEPA) delays and concerns; bonding/financial assurance for the noncoal/hardrock mining industry, particularly for operations on public lands, and as related to EPA's CERCLA 108(b) rulemaking; and BLM master leasing plans (MLP). Prioritization of a national hardrock AML program, Good Samaritan protections for AML work, and liability protection for state AML programs were also discussed. Finally, the report discussed the management by states of fish and wildlife resources within their borders, and issues related to coordination and cooperation between the states and federal agencies – including BLM, the U.S. Forest Service, and the U.S. Fish and Wildlife Service – in meeting Endangered Species Act (ESA) requirements for threatened and endangered species at mining operations pursuant to SMCRA.

Copies of the transition reports are available from IMCC.

IMCC Approves Eight New Policy Resolutions

The Interstate Mining Compact Commission (IMCC) adopted seven new policy resolutions at its 2016 Mid-Year Meeting held in Park City, Utah in October. An additional resolution concerning federal enforcement and oversight was later adopted by the Compact on December 2, 2016. The new policy resolutions are as follows:

- **Primacy:** Where primacy has been delegated to state mining regulatory programs, the federal agencies must recognize the states as the primary regulatory authorities, and demonstrate commitment to primacy and federalism that underlie implementation of national environmental laws in anticipation of the continuation of an effective state/federal partnership.

- **State Title V Program Funding Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA):** Given the vitally important role of state level environmental and natural resource programs under Title V of SMCRA, and the states' commitment to implementing effective and fiscally responsible programs as primary regulators, while maintaining cooperative working relationships with federal agencies, continuation of adequate federal funding for these state programs is needed.
- **Mine Placement of Coal Combustion Residues (CCRs):** IMCC supports the proposal of the U.S. Environmental Protection Agency (EPA), which is consistent with the approach recommended by the National Research Council (NRC), to exempt the placement of CCRs in mines from the applicability of EPA's final rules; and supports EPA's confirmation of the Office of Surface Mining Reclamation and Enforcement's (OSMRE) lead role in the development of rules regarding placement of CCRs in mines. IMCC also urges OSMRE to work closely with IMCC in developing any rules for the placement of CCRs at mines with early, meaningful, pre-rulemaking discussions on the development of any proposed rule.
- **Certified State Funding Under Title IV (Abandoned Mine Lands Program) of SMCRA:** IMCC opposes the legislative proposal terminating abandoned mine land (AML) funding for certified states and tribes as contained in the Fiscal Year 2017 budget proposal for OSMRE, and instead supports the AML funding mechanism contained in current law.
- **Development of Protection and Enhancement Plan Guidelines for Proposed and Listed Threatened and Endangered Species Under the Endangered Species Act (ESA):** OSMRE and the U.S. Fish and Wildlife Service should engage in a joint work group effort with the states without delay for the purpose of developing species specific protection and enhancement plan guidelines in a timely and expedient manner once an affected species is proposed for listing under the ESA.
- **Bonding for Coal Mining Under SMCRA:** OSMRE is urged to draw on the extensive policy and technical expertise of the states in the area of financial assurance prior to developing any proposed rule regarding bonding under SMCRA, including the allowance of states' review of any draft rule and related draft Environmental Assessment or Environmental Impact Statement.
- **Federal Oversight and Enforcement Under SMCRA:** IMCC reasserts its commitment to the principles of primacy and federalism underlying SMCRA, and urges OSMRE to rescind the Ten-Day Notice Directive (INE-35) and work cooperatively with the states in re-designing Directives REG-8 and REG-23 concerning the evaluation of state programs to address state concerns regarding application of appropriate federal enforcement in primacy states.
- **Reauthorization of Fee Collection Authority Under Title IV of SMCRA:** IMCC urges Congress to enact legislation reauthorizing fee collection authority for the AML program under Title IV of SMCRA for a period of fifteen years beyond September 2021 when it is set to expire, and supports the continuation of states and tribes as the sole delivery mechanism for AML funds given their demonstrated 35-year history of effective and efficient program implementation.

DOI Releases Controversial Final Stream Protection Rule

On December 19, 2016, the U.S. Department of the Interior (DOI) announced the release of the Office of Surface Mining Reclamation and Enforcement's (OSMRE) controversial final Stream Protection Rule (SPR). In a press release announcement, DOI claims the final rule will prevent or minimize impacts to surface water and groundwater from coal mining, and that it "updates 33-year old regulations and establishes clear requirements for responsible surface coal mining that will protect 6,000 miles of streams and 52,000 acres of forests over the next two decades." DOI Secretary Sally Jewell described the rule as a modern and balanced approach. Assistant Secretary for Land and Minerals Management Janice Schneider said the final rule "takes into account the extensive and substantive comments received from state regulators" and other stakeholders, and described the rule as both economically achievable and protective. OSMRE Director Joe Pizarchik hailed the rule as being an updated and scientifically modern rule, and said "We are closing loopholes and improving our rules to more completely implement the law [SMCRA] passed by Congress." The rule takes effect 30 days after the December 20, 2016 Federal Register publication date (published at 81 Fed. Reg. 93066). The rule can be found online here:

<https://www.federalregister.gov/documents/2016/12/20/2016-29958/stream-protection-rule>

IMCC and the states have asserted the rule is overkill and unnecessary; impinges upon the authority of the states as primary regulatory authorities, contrary to SMCRA; proposes one-size-fits-all regulations that do not take into account important regional differences, as SMCRA intends; and will cost states millions of dollars to implement without increasing funding for SMCRA-approved state regulatory programs, while having very little to no environmental benefit. The states have testified regarding the flawed nature of OSMRE's rulemaking process before Congress on several occasions, stating OSMRE did not fully engage or meaningfully consult with the states during the development of the Draft Environmental Impact Statement (DEIS) related to the SPR, or regarding the rule itself. The states assert that OSMRE's outreaches have been few, perfunctory in nature, and inadequate, despite OSMRE's claims that it has fully engaged the states. Of eleven states who signed on as cooperating agencies during development of the DEIS, all but two later withdrew from the process, citing concerns that OSMRE was not being transparent or allowing the

cooperating agencies access and opportunities to fully review draft chapters of the DEIS or background documents being used to develop the DEIS, thereby inhibiting proper analyses and comments as part of a meaningful consultation, as is required under the National Environmental Policy Act (NEPA).

Immediately after it was released, the SPR came under fire by members of Congress. Senate Majority Leader Mitch McConnell (R-KY) vowed to use the Congressional Review Act (CRA) to strike down the rule just hours after it was released. The CRA gives Congress 60 work days to void a regulation by adopting a joint resolution of disapproval. DOI would also be prohibited from reinitiating a "substantially similar" rulemaking if it were struck down under the CRA, unless supported by a new statute adopted after the joint resolution of disapproval. On December 20, Representative Evan Jenkins (R-WV) introduced a resolution of disapproval in the House (H.J.Res. 108). On January 5, 2017, House Speaker Paul Ryan (R-WI) said regulatory reform would be one of the "highest priorities" for the incoming Trump Administration and Congress, and said Congress will soon pass legislation to block DOI's SPR. In making a case for rejection of the rule, Paul Ryan said "Without any real input from the states, the administration recently handed down regulations that could wipe out literally thousands upon thousands of jobs in coal country."

MOU Between OSMRE and USFWS Accompanied by New 2016 Programmatic Biological Opinion

In conjunction with the release of the Office of Surface Mining Reclamation and Enforcement's (OSMRE) final Stream Protection Rule (SPR), the agency also released a U.S. Fish and Wildlife Service ("FWS" or "Service") 2016 Programmatic Biological Opinion (BiOp), and a Memorandum of Understanding (MOU) established between OSMRE and the U.S. FWS related to the 2016 BiOp. The 2016 BiOp resulted from completion of a formal Endangered Species Act (ESA) Section 7 consultation between OSMRE and the Service on December 16, 2016, which is also the date it became effective. The consultation took place regarding the continuation of existing surface coal mining and reclamation permits and the approval and conduct of future permitting issued by state and federal regulatory programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as modified by the SPR. The MOU states OSMRE and the Service agreed the 2016 BiOp would supersede a 1996 BiOp for all future permitting actions due to "the broad scope of the SPR and consultation and because the action under consultation sufficiently modifies the OSMRE regulations [previously] consulted on under the 1996 Biological Opinion."

The 2016 BiOp is intended to ensure that requirements of the ESA related to proposed, threatened, and endangered species and proposed and designated critical habitats are met at permitted surface coal mining and reclamation operations and for coal exploration conducted under SMCRA. The Incidental Take Statement (ITS) provided for in the 1996 BiOp will remain valid for all existing operations. However, any new permits, or revisions to previously approved permits where a revision would change the manner or extent of effects on species, must either complete the technical assistance process outlined in the 2016 BiOp and the MOU, or complete a separate ESA Section 7 consultation, or a habitat conservation plan under ESA Section 10 in order to demonstrate ESA compliance.

The MOU states it is meant to provide guidance and appropriate procedures for OSMRE, the Service, and state and tribal regulatory authorities (RAs) to follow in connection with agency decisions and implementation of the 2016 BiOp, and to establish protocols for elevating disputes between OSMRE, state and tribal RAs, and the Service. The MOU also provides for the creation of local and regional teams it says will promote cooperation on various activities related to SMCRA and the ESA, and establishes a National Surface Mining Liaison at the Service to facilitate fulfillment of the MOU and to assist interested parties in contacting Service personnel.

According to the MOU, even without the SPR, OSMRE would have been required to reinitiate consultation on SMCRA activities covered by the 1996 BiOp, since "new significant information has become available that reveals that surface coal mining operations affect listed and proposed species and proposed and designated critical habitats in a manner and to an extent not considered in the 1996 BiOp." The 2016 BiOp applies immediately, and is not contingent upon the states or tribes amending their approved SMCRA regulatory programs to be no less effective than the SPR. If the SPR is not fully implemented nationwide by 2020, the MOU states OSMRE will reinitiate consultation with the Service.

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EPA Signs Proposed Rule Re. CERCLA 108(b) Financial Assurance for Hardrock Mining

On December 1, 2016, in compliance with a court order, U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy signed a Proposed Rule to establish financial assurance requirements for hardrock mining pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 108(b). The Proposed Rule is scheduled to be published in the January 11, 2017 Federal Register. As of the date of publication, EPA has set a 60 day comment period. Under the court order, EPA is also required to issue a Final Rule by December 1, 2017. A pre-publication version of the proposed rule is available at this link (450 pages):

<https://www.epa.gov/sites/production/files/2016-12/documents/prepublication-version-cercla-108b-hardrock-proposed-rule.pdf>. Additional background documents supporting the proposed rule have also been made available by EPA online here: <https://www.epa.gov/superfund/pre-publication-copy-proposed-financial-responsibility-requirements-under-cercla-section>.

The court order also required EPA to issue a decision by December 1, 2016 as to whether CERCLA 108(b) financial assurance should be required for three additional industry sectors: chemical manufacturing; coal and petroleum products manufacturing; and electricity generation, transmission, and distribution. On January 11, EPA will publish a Notice of Intent (NOI) to pursue rulemaking in all three industries. Language in the preamble suggests the main components of the hardrock Proposed Rule will be applied to similar forthcoming rulemaking for these sectors.

In the Preamble, the Proposed Rule states it is intended to prevent shifting the burden to the taxpayers to cover costs of CERCLA liabilities at facilities where the owners or operators have not established financial responsibility adequate to cover those liabilities. The proposed rule is also intended to provide an incentive for implementation of sound practices at hardrock mining facilities that would decrease the need for future CERCLA actions. EPA believes this provision will encourage protective and responsible closure and cleanup of hardrock mining facilities.

In discussions and comments filed with EPA during the rulemaking process, the Interstate Mining Compact Commission (IMCC) contended that over the years many states have developed their own robust and comprehensive state programs that already require sufficient financial assurance to cover the costs of CERCLA liabilities, as well as imposing requirements that reduce or eliminate the risk of a CERCLA event from ever occurring. The states have expressed concern that these existing programs may be preempted by duplicative requirements EPA is proposing. If preempted, state programs will have no recourse to collect on financial assurance in situations where a company is unable to meet their liabilities and where there are no hazardous releases, such as for reclamation costs. In those instances, under the proposed rule, EPA would not be inclined to collect on a financial assurance instrument, but state programs would. Until it was signed, EPA has been reluctant to share details with the states concerning specific language in the Proposed Rule or the formula being proposed to calculate financial assurance amounts. EPA has provided for reductions in the financial responsibility amount for risk-reducing practices, including enforceable controls established in compliance with federal and state reclamation and closure programs that are backed by financial bonding. However, until a full analysis of the Proposed Rule can be conducted, IMCC and the states remain skeptical as to the impacts it may have on existing state programs.

EPA will be presenting two public webinars in January to discuss the rule and answer questions by stakeholders. Registration in advance is required. The webinars will take place on January 10 (register here: <https://clu-in.org/conf/tio/108bpropfin/>) and January 30 (register here: <https://clu-in.org/conf/tio/108bfrf>).

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us

DOI Designates Approximately 75,000 Acres in Tennessee as Unsuitable for Mining

The U.S. Department of the Interior (DOI) issued a news release on December 7, 2016 announcing that the Office of Surface Mining Reclamation and Enforcement (OSMRE) is designating close to 75,000 acres of mountain ridgelines in eastern Tennessee as "lands unsuitable for mining." A Federal Register notice of the decision is pending. The decision came as the result of a request received from the state of Tennessee via petition filed in 2010 with DOI for OSMRE to declare a 1,200 foot corridor consisting of 600 feet on each side of the ridgelines in the North Cumberland Wildlife Management Area and Emory River Tract Conservation Easement as unsuitable for surface coal mining operations. The area is critical to the state's tourism and outdoor recreation economy, provides valuable fish and wildlife habitat, and supports a healthy watershed.

In its petition, the state said coal mining in the designated area would be incompatible with existing local and state land use plans and programs, and that mining would result in significant damage to natural systems and cultural, scientific, and aesthetic values. The petition area encompassed approximately 67,326 acres. Based on public comments received and further evaluation, including use of improved aerial mapping technology that more accurately reflected the state's objective, OSMRE is designating 74,968 acres associated with 569 miles of ridgeline as unsuitable in Anderson, Campbell, Scott, and Morgan Counties in Tennessee. The petition area creates a unique horizontal protection zone along individual ridgelines.

OSMRE's evaluation of the petition included several public meetings and written statements received during extended public comment periods. OSMRE also worked with the Tennessee Department of Environment and Conservation and the Tennessee Wildlife Resources Agency in evaluating the petition. A final Environmental Impact Statement (EIS) was released on October 28, 2016.

"Today's action honors Tennessee's request to protect the Cumberland Plateau's majestic forests, mountains, and streams for future generations," according to Secretary of the Interior Sally Jewell. "This is great news for hunters, anglers, hikers, and birders who come, year after year, to enjoy this incredible place. I applaud the state for their forward-looking vision that will help strengthen the local economy and help protect a critical watershed."

Tennessee's Department of Environment and Conservation Commissioner Bob Martineau expressed the state's appreciation for OSMRE's thoughtful approach and handling of the 2010 petition, noting the final decision provides needed protection for particular high-elevation ridgelines in the region, while also providing increased potential for beneficial remaining in response to the state's input that is meant to achieve optimal conservation and recovery on important public lands.

U.S. Senator Lamar Alexander praised the decision for helping to safeguard the state's mountains without affecting mining operations in other parts of the counties and elsewhere in the state. "This means these ridgetop landscapes – and the rivers, streams, and forests surrounding them – can continue to bring millions of tourists and thousands of jobs to Tennessee," he said.

The area is an important wildlife corridor, providing habitat for black bear, elk, and numerous songbirds like the cerulean warbler. The New and Emory Rivers also run through the designated area and provide clean drinking water to thousands of Tennesseans. The designation does not impact existing mining operations within the area.

North Dakota Challenges DOI's Stream Protection Rule

North Dakota Attorney General Wayne Stenehjem filed a lawsuit on December 20 challenging the final Stream Protection Rule (SPR) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) published in the Federal Register on the same date by the Office of Surface Mining Control and Reclamation and Enforcement (OSMRE) in the U.S. Department of the Interior (DOI). The case was filed in the United States District Court for the District of Columbia.

"This is the epitome of a midnight regulation," Stenehjem said. "This case involves a last-ditch effort by the outgoing Administration to encroach on the clear authority granted to the State of North Dakota and the Public Service Commission." North Dakota's complaint contends that the new OSMRE rule, which places numerous onerous restrictions on surface coal mining and reclamation activities, violates federal law and the United States Constitution.

"The North Dakota Public Service Commission has overseen coal mining and reclamation in the state for decades," said Public Service Commissioner Randy Christmann. "In the most recent evaluation of our program, the OSM[RE] said that North Dakota has an effective program with no issues in need of corrective action. But with this rule, the Obama administration would infringe on our authority and effectively stop much of the coal mining in North Dakota."

"We have worked for months to try to change this rule, which was clearly designed to address issues specific to other areas of the country," said Public Service Commission Chair Julie Fedorchak. "The agency ignored all of our input and went ahead with a one-size-fits-all rule that will be extremely destructive to North Dakota industry while addressing no identified problem in our state."

North Dakota contends the new rule directly infringes on the state's exclusive authority to regulate surface mining and reclamation activities within its borders and unlawfully expands the federal government's authority beyond the limits established by law. The lawsuit also asserts the rule would be very harmful to North Dakota's economy. Congress and the courts have repeatedly affirmed that the states have primacy for developing authorizing, issuing, and enforcing regulations for surface mining and reclamation operations.

In a news release, North Dakota describes this rule as similar to the federal government's attempt to redefine 'waters of the United States' to seize jurisdiction over "swaths of state lands and waters." "North Dakota led the fight against that effort by securing a nationwide stay of the rule, and we will fight against this rule as well. I hope Congress and the new Administration will look closely at this rule and quickly exercise their authority to repeal it." Stenehjem said.

NAAML P Report Submitted to Trump/Pence Administration DOI Transition Team

The National Association of Abandoned Mine Land Programs (NAAML P) submitted a report to the Trump/Pence Administration's Department of the Interior (DOI) Transition Team on December 6, 2016. The report was developed by IMCC in close consultation with NAAML P.

The NAAML report discusses background on the Abandoned Mine Lands (AML) problem; the ongoing importance of the AML program for public health, safety, and the environment; and the basic functioning of the state and tribal AML programs for both coal and hardrock AML work. It also focuses on the need to establish an effective working relationship between the state and tribal AML programs under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the new Administration in order to contend with the many critical issues facing the AML world. The report also provides general state perspectives on several key AML policy issues particularly related to the SMCRA Title IV program, including: reauthorization of the AML Title IV fee collection authority; long term AML program grant funding needs; grant funding for certified program and minimum program states and tribes; the sequestration of SMCRA Title IV grant funding; and Emergency AML funding. The need for a national hardrock AML program, and liability protections for Good Samaritan groups and state and tribal AML programs conducting AML water treatment projects are also addressed. Finally, the report discusses AML economic revitalization programs such as the Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act being considered by Congress, and the AML Pilot Program, which is currently in effect.

The report concludes by encouraging the Trump Administration to recognize the AML program's importance, coordinate with and seek input from state and tribal AML programs, and take the steps necessary to ensure that the AML program has a bright future.

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DOI Releases Programmatic EIS Scoping Report Re. Federal Coal Leasing Program

The U.S. Department of the Interior's (DOI) Bureau of Land Management (BLM) released its Programmatic Environmental Impact Statement (PEIS) Scoping Report on January 11, 2017, calling it a "comprehensive, public review of the Nation's federal coal program." The review was prompted by Secretarial Order 3338, which was signed by Interior Secretary Sally Jewell on January 15, 2016. At that time, a pause was placed on issuing new coal leases while BLM's review is underway. The pause does not apply to existing coal production activities, and limited exceptions have been granted, including for metallurgical coal (typically used in steel production), small lease modifications and emergency leasing, including where there had been a demonstrated safety need for insufficient reserves.

The Secretary's order called for the examination of concerns about the federal coal program that had been raised by the Government Accountability Office (GAO), DOI's Inspector General, members of Congress, and others. The PEIS report suggests modernization of the federal coal program is needed in the following areas: ensuring a fair return to Americans for the sale of their public coal resources, assessing the structure and efficiency of the coal program in light of current market conditions, and considering impacts on communities and the environment including climate change.

"Based on the thoughtful input we received through this extensive review, there is a need to modernize the federal coal program," said Secretary Jewell. "We have a responsibility to ensure the public – including state governments – get a fair return from the sale of America's coal, operate the program efficiently and in a way that meets the needs of our neighbors in coal communities, and minimize the impact coal production has on the planet that our children and grandchildren will inherit. The only responsible next step is to undertake further review and implement these commonsense measures."

BLM Director Neil Kornze said, "Over the past eight years we have focused on modernizing and strengthening the way that energy is produced in America. As a result of that work, solar, wind and geothermal power are the fastest growing sources of energy in the United States and oil and gas are produced in safer and cleaner ways. It is vital that we update our nation's coal program as well. This report provides the critical starting point for the modernization that is needed."

The report sets out policy ideas for addressing the issues, and identifies additional data and technical work that will guide how DOI decides to move forward. The report also identifies a number of "good government" modernization activities DOI will take in the near future with intent to improve the program, including: increased transparency of the leasing program; increased protection for private surface owners; and opportunities to prevent wasted natural gas from coal mines. Additional areas BLM will consider include: adjusting rental rates and bonus bids paid for leased coal to reflect inflation; strengthening financial and environmental responsibility requirements for operators who are permitted to bid on coal leases; and undertaking actions to improve lease process efficiency. Next steps in the review process include finalizing the additional analysis identified in the report and completion of the programmatic environmental review required by Secretary Jewell's January 2016 order.

A copy of the BLM PEIS Scoping Report Vol. I (190 pages), and Vol. II (1182 pages) containing the Supplemental Report Appendices, is available online here: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=93180>. The public scoping comments received by BLM are also linked to on that page, as is the Notice of Intent to develop the PEIS that was published in the Federal Register last March.

WGA Approves Seven New Policy Resolutions

At the Western Governors' Association's (WGA) 2016 Winter Meeting in San Diego, California in December, the Association adopted seven new policy resolutions, as follows:

- **Building a Stronger State-Federal Relationship:** Where authority has been delegated by the federal government to the states, states should be granted the maximum administrative discretion possible and should be treated as co-regulators.
 - **States' Share of Royalties and Leasing Revenues from Federal Lands:** The federal government must honor its statutory obligations to share royalty and lease payments with states and counties.
 - **Tax-Exempt Federal Lands and Secure Rural Schools:** The federal government must honor its historic Payment in Lieu of Taxes agreement with states and counties in the West to compensate them for tax-exempt federal lands within their borders.
 - **Water Quality in the West:** States have jurisdiction over water resource allocation decisions and are responsible for balancing state water resource needs within the objectives of the federal Clean Water Act.
 - **Storage and Disposal of Radioactive Waste and Spent Nuclear Fuel:** Governors must be consulted about federal activities involving the transportation, storage or disposal of radioactive waste in a state's borders.
 - **Financial Assurance Regulation:** Western Governor believe that states have financial assurance regulatory programs in place that are working well and they should not be preempted or duplicated by any Environmental Protection Agency (EPA) program.
 - **Regulations of Coal Combustion Residuals:** Western Governors support safe, beneficial use of coal combustion residuals and call on the EPA to work with states and stakeholders to develop a national framework for advancing beneficial use.
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New Critical Habitat Rules Under the ESA Challenged by States

Ten months after the Obama Administration revised critical habitat rules under the Endangered Species Act (ESA), eighteen states are challenging the rules in court, claiming the final rules are "an unlawful attempt to expand regulatory authority and control over State lands and waters and should be vacated and enjoined because they violate the ESA and the Administrative Procedure Act ("APA)." Led by Alabama, the plaintiff states also include Arkansas, Alaska, Arizona, Colorado, Kansas, Louisiana, Michigan, Montana, Nebraska, New Mexico, Nevada, North Dakota, South Carolina, Texas, West Virginia, Wisconsin, and Wyoming. The Final Rules in question were published in the Federal Register on February 11, 2016 (81 Fed. Reg. 7413-40). The rules in question can be viewed online here: <https://www.federalregister.gov/documents/2016/02/11/2016-02680/listing-endangered-and-threatened-species-and-designating-critical-habitat-implementing-changes-to>.

Specifically, the states are challenging revised definitions of "critical habitat" and "adverse modification" found in the new rules implementing the Endangered Species Act (ESA), which was issued by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (or "Services"). The states filed the suit in the Southern District of Alabama on November 29, 2016. They argue the revised definitions are inconsistent with the ESA, and that they expand the Services' authority to designate areas that are not currently occupied by threatened or endangered species as critical habitat. They are calling on the Services to explain how unoccupied areas can be "essential" to the conservation of a species and warrant protection under the ESA. The suit also challenges the services' ability to designate critical habitat based on biological factors not yet present in an area. Designation as critical habitat has implications under Section 7 of the ESA requiring the federal agencies to insure any proposed project is not likely to "result in the destruction or adverse modification" of any species' critical habitat. The Services have recently acknowledged that such designations can have immediate, negative economic impacts on these areas.

If allowed to stand, the states assert the Final Rules would grant the Services virtually unlimited power to declare land and water critical habitat for endangered and threatened species, regardless of whether that land or water is occupied or unoccupied by the species, and regardless of the presence or absence of the physical or biological features necessary to sustain the species – or of whether the land or water is actually essential to the conservation of the species. They argue the ESA "provides for the Services to designate as occupied critical habitat 'specific areas...occupied by the species, at the time it was listed...on which are found those physical or biological features'

necessary to support the species," and the statute "intended designation of unoccupied areas to require a higher threshold than designation of occupied areas." In addition, they argue the Final Rules would allow the Services to declare that almost any activity destroys or adversely modifies critical habitat, whereas the ESA is "present-focused and prohibits only those activities that 'result in the destruction or adverse modification of habitat of such species,' not those that might prevent currently non-habitable areas from developing into habitat."

OSMRE to Present 5th ECHO Award to PA Mining Engineer

Craig Burda, a mining engineer with the Pennsylvania Department of Environmental Protection (PA DEP) was recently awarded the Office of Surface Mining Reclamation and Enforcement's (OSMRE) 5th ECHO Award for his successful efforts to end acid mine drainage (AMD) from coal waste facilities. The award was presented by OSMRE Director Joe Pizarchik at the Rachel Carson State Office Building in Harrisburg, Pennsylvania on January 4, 2017.

For more than 20 years, Craig has dedicated himself to protecting people and the environment. Due to his work at the PA DEP and his understanding of the law and the engineering needed to eliminate the hazard of AMD, his efforts led to a change in how the Commonwealth permits coal refuse sites. Today, refuse facilities in Pennsylvania are permitted as "zero discharge" after reclamation is completed.

Craig's nomination, submitted by an OSMRE hydrologist, outlines how he analyzed groundwater data and showed how past reclamation techniques were inadequate to prevent AMD. He also required a coal producer to use new materials to line a refuse area, which created a new standard. As his nomination states: "Craig's accomplishment was achieved with no change in the regulatory requirements for protecting surface and groundwater. He evolved the program by simply failing to accept substandard practices and using monitoring data as the basis for his permitting decisions."

"Craig's efforts show that even someone working out of the public eye can have a terrific impact on protecting people and the environment." said Joe Pizarchik, "This is exactly why we created the ECHO Award."

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The IMCC Staff wishes you and yours a
Happy, Healthy, and Prosperous New Year!