

# **Coal Abandoned Mine Land (AML) Language in the Infrastructure Investment and Jobs Act of 2021**

## **Section by Section Summary:**

**Division D, Title VII of the Infrastructure Investment and Jobs Act of 2021**

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## **Section 40701. AML Fund Authorization of Appropriations**

**Subsection 40701(a)** Authorizes \$11.293 billion to be appropriated from the General Treasury into the Abandoned Mine Land (AML) Fund in FY2022, to be available until it's all spent.

### **Subsection 40701(b)**

**(1)** Directs the \$11.293 billion appropriation to be used "as expeditiously as practicable" for annual grants to eligible states and Tribes "for abandoned mine land and water reclamation projects under SMCRA"-- except for \$25 million to be used for updating the AML inventory.

**(2)** Specifies that all 28 existing AML state and Tribal programs (uncertified, certified, and OSMRE-primacy) shall be eligible for funds.

*For reference in interpreting this section, the following sections from SMCRA are summarized here:*

*30 USC 1235 is a section that specifies what a state or Tribe must do to have an approved AML program.*

*30 USC 1232(g)(8)(b) explicitly names Tennessee and Missouri eligible for funds; these states do not have state-run AML programs.*

*30 USC 1240a(a) lays out the process by which a state or Tribe may acquire Certification status.*

**(3)** Allows, but does not require, states and Tribes to aggregate reclamation bids into regional or statewide contracts.

**Subsection 40701(c)** Requires that these funds be used for the reclamation of Priority 1-3 sites, water infrastructure replacement projects, and emergency reclamation projects. Notably, it does not list the more flexible spending activities that have historically been allowed for Certified states and Tribes (ie. 30 USC 1240a) as a covered activity, nor does it list inventorying activities (30 USC 1233(c)) as a covered activity. Though OSMRE has yet to issue formal guidance, the agency has stated publicly that funds under this bill will be eligible for standalone Priority 3 AMD projects but that funds will not be eligible for AMD Set-Aside Accounts.<sup>1</sup>

*For reference in interpreting this section, the following sections from SMCRA are summarized here:*

*30 USC 1233(a) says that funds are to be used to reclaim land and water damaged by pre-1977 coal mining according to the following priorities:*

*Priority 1: problems that pose "extreme danger" to public health and safety,*

*Priority 2: problems that threaten public health or safety,*

*Priority 3: land and water damaged by pre-1977 coal mining.*

*This section does state that the priority ranking applies for funds "under this subchapter"... "except as provided for under section 1240a of this title" (section 1240a refers to the activities that Certified states and Tribes may do with their funds).*

*30 USC 1233(b) says that only non-certified programs may use AML funds to enhance or replace water infrastructure if water supplies have been impacted by pre-1977 mining.*

*30 USC 1240 says that AML funds can be used by OSMRE for emergency reclamation projects.*

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<sup>1</sup> "What does the Bipartisan Infrastructure Law mean for OSMRE's AML Program? Frequently Asked Questions." Office of Surface Mining Reclamation and Enforcement (OSMRE). Accessed February 4, 2022. <https://www.osmre.gov/bil>

### **Subsection 40701(d)**

**(1)** Grants shall be distributed equally over 15 years to states and Tribes (incl. Certified programs) based on how much coal was mined in that state or Tribe prior to 1977. The only exception is that at least \$20 million must be distributed to each state and Tribe (see 40701(e) below).

**(2)** States explicitly that Certified states and Tribes are eligible for funding under this bill. Specifically, this section says that the provision in SMCRA that disallows Certified states and tribes from receiving grants from the AML Fund (USC 1231(f)(3)(B)) does *not* apply to funding under this bill.

**(3)** States that OSMRE must give a report to Congress on or before 2028 related to progress cleaning up Priority 1-3 AML problems (as well as water infrastructure projects and emergency projects). OSMRE is required to solicit input for this report from state and Tribal AML programs and to include a description of this input in the report.

**(4)(A)** OSMRE is required to evaluate the distribution of grants made under this bill on or before November 2041. This section (which requires evaluation of the distribution of grants in 2041, after the last grants have been distributed in 2036) implicitly suggests that funds under this bill have a 5-year expenditure window. Though, this expenditure window is not explicit and OSMRE has yet to provide formal guidance on the matter.

**(4)(B)** In 2041 (or potentially before or after, depending on when OSMRE completes an evaluation of grant funding under the program) States and Tribes are required to return any "unused funds" to the AML Fund. The bill does not state how the funds might be redistributed, only that unused funds will be returned to the federal AML Fund.

**Subsection 40701(e)** Requires that at least \$20 million in "total grant funding" be distributed to each state and Tribe, to the extent that a state or Tribe has at least \$20 million in outstanding AML problems.

**Subsection 40701(f)** Allows, but does not require ("priority may also be given"), states and Tribes to prioritize AML projects that employ former or current coal workers.

**Subsection 40701(g)** OSMRE must use \$25 million of the \$11.293 billion appropriation to provide funds and technical assistance to states and Tribes to update their AML inventories.

## **Section 40702. Abandoned Mine Reclamation Fee**

**Subsection 40702(a)** Lowers the per ton fee from: 28 cents to 22.4 cents for surface-mined coal; 12 cents to 9.6 cents for underground-mined coal; and 8 cents to 6.4 cents for lignite.

**Subsection 40702(b)** Extends the collection authority for AML fees until September 30, 2034. Though the IJA was passed in November 2021, the new fee levels are assessed retroactively beginning on October 1, 2021, according to OSMRE.<sup>2</sup>

### **Section 40703. Amounts Distributed from AML Fund**

**(1)** Extends AML grants under the existing distributions through 2035 instead of 2022. Specifically, the deposits into the AML fund from a) AML fees, b) user charges, and c) "recovered moneys" that are allocated as i) the distribution of 50% of AML fees back to a state/tribe, and ii) 30% of total fees being distributed according to historical coal formula are now to be allocated annually through 2035 instead of 2022.

**(2)** Requires OSMRE, starting in 2036, to annually distribute to states/tribes regular AML grants equal to those in 2035, to the extent that moneys remain in the AML Fund. Notably, according to SMCRA, the distributions starting in 2036 are those sourced from a) AML fees, b) user charges, and c) "recovered moneys" -- it does not list the new \$11.3 billion appropriation under the 2021 bill nor funds that states/tribes might not use and give back to OSMRE in future years as deposits into the AML Fund that qualify for the distributions that will start in 2036.

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## **Division D — Energy**

### **Title XI--WAGE RATE REQUIREMENTS**

#### **Section 41101. Wage Rate Requirements**

**Subsection 41101(a)** Requires workers ("laborers and mechanics") on projects ("construction, alteration, or repair work") funded even partially by AML funds provided under this bill to be paid prevailing wage rates according to the Davis-Bacon Act. Specifically, it states that prevailing wages apply to projects funded under "this division" of the bill; the AML provisions are in Title VII and the wage rate provision is in Title XI of Division D of the bill.

**Subsection 41101(b)** Specifies under what parts of the US Code the Secretary of Labor has the authority to implement the prevailing wage rates for these projects.

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<sup>2</sup> "NOTICE OF REAUTHORIZATION OF FEE COLLECTION AUTHORITY." November 15, 2021. Office of Surface Mining Reclamation and Enforcement." [https://www.osmre.gov/sites/default/files/pdfs/2021\\_12\\_07\\_FEE\\_REAUTHORIZATION.pdf](https://www.osmre.gov/sites/default/files/pdfs/2021_12_07_FEE_REAUTHORIZATION.pdf)

## Appendix A.

### Full Text of AML Language in 2021 Infrastructure Bill

#### Division D, Title VII of the Infrastructure Investment and Jobs Act of 2021

#### TITLE VII--ABANDONED MINE LAND RECLAMATION

##### SEC. 40701. ABANDONED MINE RECLAMATION FUND AUTHORIZATION OF APPROPRIATIONS.

**(a)** In General.--There is authorized to be appropriated, for deposit into the Abandoned Mine Reclamation Fund established by section 401(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(a)) \$11,293,000,000 for fiscal year 2022, to remain available until expended.

**(b)** Use of Funds.--

**(1)** In general.--Subject to subsection (g), amounts made available under subsection (a) shall be used to provide, as expeditiously as practicable, to States and Indian Tribes described in paragraph (2) annual grants for abandoned mine land and water reclamation projects under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

**(2)** Eligible grant recipients.--Grants may be made under paragraph (1) to--

**(A)** States and Indian Tribes that have a State or Tribal program approved under section 405 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1235);

**(B)** States and Indian Tribes that are certified under section 411(a) of that Act (30 U.S.C. 1240a(a)); and

**(C)** States and Indian Tribes that are referred to in section 402(g)(8)(B) of that Act (30 U.S.C. 1232(g)(8)(B)).

**(3)** Contract aggregation.--In applying for grants under paragraph (1), States and Indian Tribes may aggregate bids into larger statewide or regional contracts.

**(c)** Covered Activities.--Grants under subsection (b)(1) shall only be used for activities described in subsections (a) and (b) of section 403 and section 410 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233, 1240).

**(d)** Allocation.--

**(1)** In general.--Subject to subsection (e), the Secretary of the Interior shall allocate and distribute amounts made available for grants under subsection (b)(1) to States and Indian Tribes on an equal annual basis over a 15-year period beginning on the date of enactment of this Act, based on the number of tons of coal historically produced in the States or from the applicable Indian land before August 3, 1977, regardless of whether the State or Indian Tribe is certified under section 411(a) of the Surface

Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(a)).

**(2)** Surface mining control and reclamation act exception.--Section 401(f)(3)(B) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(f)(3)(B)) shall not apply to grant funds distributed under subsection (b)(1).

**(3)** Report to congress on allocations.--

**(A)** In general.--Not later than 6 years after the date on which the first allocation to States and Indian Tribes is made under paragraph (1), the Secretary of the Interior shall submit to Congress a report that describes any progress made under this section in addressing outstanding reclamation needs under subsection (a) or (b) of section 403 or section 410 of the Surface Mining Control and Reclamation and Act of 1977 (30 U.S.C. 1233, 1240).

**(B)** Input.--The Secretary of the Interior shall--

**(i)** prior to submitting the report under subparagraph (A), solicit the input of the States and Indian Tribes regarding the progress referred to in that subparagraph; and

**(ii)** include in the report submitted to Congress under that subparagraph a description of any input received under clause (i).

**(4)** Redistribution of funds.--

**(A)** Evaluation.--Not later than 20 years after the date of enactment of this Act, the Secretary of the Interior shall evaluate grant payments to States and Indian Tribes made under this section.

**(B)** Unused funds.--On completion of the evaluation under subparagraph (A), States and Indian Tribes shall return any unused funds under this section to the Abandoned Mine Reclamation Fund.

**(e)** Total Amount of Grant.--The total amount of grant funding provided under subsection (b)(1) to an eligible State or Indian Tribe shall be not less than \$20,000,000, to the extent that the amount needed for reclamation projects described in that subsection on the land of the State or Indian Tribe is not less than \$20,000,000.

**(f)** Priority.--In addition to the priorities described in section 403(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233(a)), in providing grants under this section, priority may also be given to reclamation projects described in subsection (b)(1) that provide employment for current and former employees of the coal industry.

**(g)** Reservation.--Of the funds made available under subsection (a), \$25,000,000 shall be made available to the Secretary of the Interior to provide States and Indian Tribes with the financial and technical assistance necessary for the purpose of making amendments to the inventory maintained under section 403(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233(c)).

SEC. 40702. ABANDONED MINE RECLAMATION FEE.

**(a)** Amount.--Section 402(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(a)) is amended--

- (1)** by striking ``28 cents" and inserting ``22.4 cents";
- (2)** by striking ``12 cents" and inserting ``9.6 cents"; and
- (3)** by striking ``8 cents" and inserting ``6.4 cents".

**(b)** Duration.--Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking ``September 30, 2021" and inserting ``September 30, 2034".

**SEC. 40703. AMOUNTS DISTRIBUTED FROM ABANDONED MINE RECLAMATION FUND.**

Section 401(f)(2) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(f)(2)) is amended--

- (1)** in subparagraph (A)--
  - (A) in the subparagraph heading, by striking ``2022" and inserting ``2035"; and
  - (B) in the matter preceding clause (i), by striking ``2022" and inserting ``2035"; and
- (2)** in subparagraph (B)--
  - (A) in the subparagraph heading, by striking ``2023" and inserting ``2036";
  - (B) by striking ``2023" and inserting ``2036"; and
  - (C) by striking ``2022" and inserting ``2035".

**SEC. 40704. ABANDONED HARDROCK MINE RECLAMATION.**

**(a)** Establishment.--Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior (referred to in this section as the ``Secretary") shall establish a program to inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land based on conditions including need, public health and safety, potential environmental harm, and other land use priorities.

**(b)** Award of Grants.--Subject to the availability of funds, the Secretary shall provide grants on a competitive or formula basis to States and Indian Tribes that have jurisdiction over abandoned hardrock mine land to reclaim that land.

**(c)** Eligibility.--Amounts made available under this section may only be used for Federal, State, Tribal, local, and private land that has been affected by past hardrock mining activities, and water resources that traverse or are contiguous to such land, including any of the following:

- (1)** Land and water resources that were--
  - (A)** used for, or affected by, hardrock mining activities; and
  - (B)** abandoned or left in an inadequate reclamation status before the date of enactment of this Act.

(2) Land for which the Secretary makes a determination that there is no continuing reclamation responsibility of a claim holder, liable party, operator, or other person that abandoned the site prior to completion of required reclamation under Federal or State law.

**(d) Eligible Activities.--**

(1) In general.--Amounts made available to carry out this section shall be used to inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land based on the priorities described in subsection (a).

(2) Exclusion.--Amounts made available to carry out this section may not be used to fulfill obligations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) agreed to in a legal settlement or imposed by a court, whether for payment of funds or for work to be performed.

**(e) Authorization of Appropriations.--**

(1) In general.--There is authorized to be appropriated to carry out this section \$3,000,000,000, to remain available until expended, of which--

(A) 50 percent shall be for grants to States and Indian Tribes under subsection (b) for eligible activities described in subsection (d)(1); and

(B) 50 percent shall be for available to the Secretary for eligible activities described in subsection (d)(1) on Federal land.

(2) Transfer.--The Secretary may transfer amounts made available to the Secretary under paragraph (1)(B) to the Secretary of Agriculture for activities described in subsection (a) on National Forest System land.

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**Division D — Energy**

**TITLE XI--WAGE RATE REQUIREMENTS**

**SEC. 41101. WAGE RATE REQUIREMENTS.**

(a) Davis-Bacon.--All laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under this division or an amendment made by this division shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the "Davis-Bacon Act").

(b) Authority.--With respect to the labor standards specified in subsection (a), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.



## **Appendix B.**

### **Excerpts of Surface Mining Control and Reclamation Act (SMCRA) referenced in Division D, Title VII of the 2021 infrastructure bill**

Excerpts are prior to IIJA amendments.

#### **USC 1231. Abandoned Mine Reclamation Fund**

##### **(a) Establishment; administration; State funds**

There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (herein- after referred to as the “fund”) which shall be administered by the Secretary of the Interior. State abandoned mine reclamation funds (State funds) generated by grants from this subchapter shall be established by each State pursuant to an approved State program.

##### **(b) Sources of deposits to fund**

The fund shall consist of amounts deposited in the fund, from time to time derived from—

- (1) the reclamation fees levied under section 1232 of this title;
- (2) any user charge imposed on or for land reclaimed pursuant to this subchapter after expenditures for maintenance have been deducted;
- (3) donations by persons, corporations, associations, and foundations for the purposes of this subchapter;
- (4) recovered moneys as provided for in this subchapter; and
- (5) interest credited to the fund under subsection (e) of this section.

##### **(c) Use of moneys**

Moneys in the fund may be used for the following purposes:

- (1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in

situ; prevention, abatement, and control of coal mine subsidence; and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed \$3,000,000 of the funds made available to any State under section 1232(g)(1) of this title;

(2) acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 1239 of this title;

(3) acquisition of land as provided for in this subchapter;

(4) enforcement and collection of the reclamation fee provided for in section 1232 of this title;

(5) restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitutes an emergency as provided for in this subchapter;

(6) grants to the States to accomplish the purposes of this subchapter;

(7) administrative expenses of the United States and each State to accomplish the purposes of this subchapter;

(8) for use under section 1240a of this title;

(9) for the purpose of section 1257(c) of this title, except that not more than \$10,000,000 shall annually be available for such purpose;

(10) for the purpose described in section 1232(h) of this title; and

(11) all other necessary expenses to accomplish the purposes of this subchapter.

**(d) Availability of moneys; no fiscal year limitation**

**(1) In general**

Moneys from the fund for expenditures under subparagraphs (A) through (D) of section 1232(g)(3) of this title shall be available only when appropriated for those subparagraphs.

**(2) No fiscal year limitation**

Appropriations described in paragraph (1) shall be made without fiscal year limitation.

**(3) Other purposes**

Moneys from the fund shall be available for all other purposes of this subchapter without prior appropriation as provided in subsection (f).

### **(e) Interest**

The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for achieving the purposes of the transfers under section 1232(h) of this title and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund for the purpose of the transfers under section 1232(h) of this title.

### **(f) General limitation on obligation authority**

#### **(1) In general**

From amounts deposited into the fund under subsection (b), the Secretary shall distribute during each fiscal year beginning after September 30, 2007, an amount determined under paragraph (2).

#### **(2) Amounts**

##### **(A) For fiscal years 2008 through 2022**

For each of fiscal years 2008 through 2022, the amount distributed by the Secretary under this subsection shall be equal to—

(i) the amounts deposited into the fund under paragraphs (1), (2), and (4) of subsection (b) for the preceding fiscal year that were allocated under paragraphs (1) and (5) of section 1232(g) of this title; plus

(ii) the amount needed for the adjustment under section 1232(g)(8) of this title for the current fiscal year.

##### **(B) Fiscal years 2023 and thereafter**

For fiscal year 2023 and each fiscal year thereafter, to the extent that funds are available, the Secretary shall distribute an amount equal to the amount distributed under subparagraph (A) during fiscal year 2022.

#### **(3) Distribution**

##### **(A) In general**

Except as provided in subparagraph (B), for each fiscal year, of the amount to be distributed to States and Indian tribes pursuant to paragraph (2), the Secretary shall distribute—

(i) the amounts allocated under paragraph (1) of section 1232(g) of this title, the amounts allocated under paragraph (5) of section 1232(g) of this title, and any amount reallocated under section 1240a(h)(3) of this title in accordance with section 1240a(h)(2) of this title, for grants to States and Indian tribes under section 1232(g)(5) of this title; and

(ii) the amounts allocated under section 1232(g)(8) of this title.

**(B) Exclusion**

Beginning on October 1, 2007, certified States shall be ineligible to receive amounts under section 1232(g)(1) of this title.

**(4) Availability**

Amounts in the fund available to the Secretary for obligation under this subsection shall be available until expended.

**(5) Addition**

**(A) In general**

Subject to subparagraph (B), the amount distributed under this subsection for each fiscal year shall be in addition to the amount appropriated from the fund during the fiscal year.

**(B) Exceptions**

Notwithstanding paragraph (3), the amount distributed under this subsection for the first 4 fiscal years beginning on and after October 1, 2007, shall be equal to the following percentage of the amount otherwise required to be distributed:

(i) 50 percent in fiscal year 2008.

(ii) 50 percent in fiscal year 2009.

(iii) 75 percent in fiscal year 2010.

(iv) 75 percent in fiscal year 2011.

## USC 1232. Reclamation fee

### (a) Payment; rate

All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 28 cents per ton of coal produced by surface coal mining and 12 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 8 cents per ton, whichever is less.

### (b) Due date

Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after August 3, 1977, and ending September 30, 2021.

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### (g) Allocation of funds

**(8)(B)** Notwithstanding any other provision of law, this paragraph applies to the States of Tennessee and Missouri.

## USC 1233. Objectives of fund

### (a) Priorities

Expenditure of moneys from the fund on lands and water eligible pursuant to section 1234 of this title for the purposes of this subchapter, except as provided for under section 1240a of this title, shall reflect the following priorities in the order stated:

(1)(A) the protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A);

(2)(A) the protection of public health and safety from adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A); and

(3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

### **(b) Water supply restoration**

(1) Any State or Indian tribe not certified under section 1240a(a) of this title may expend funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 1232(g) of this title for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title, section 1234 of this title shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title.

### **(c) Inventory**

For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 1235 of this title, and assisting in making the certification referred to in section 1240a(a) of this title, the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 1234 of this title which meet the priorities stated in paragraphs (1) and (2) of subsection (a) of this section. Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 1235 of this title may offer amendments, subject to the approval of the Secretary, to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 1235 of this title. On a regular basis, but not less than annually, the projects completed under this subchapter shall be so noted on the inventory under standardized procedures established by the Secretary.

## **USC 1235. State reclamation program**

### **(a) Promulgation of regulations**

Not later than the end of the one hundred and eighty-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

### **(b) Submission of State Reclamation Plan and annual projects**

Each State having within its borders coal mined lands eligible for reclamation under this subchapter, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this subchapter.

### **(c) Restriction**

The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 1253 of this title.

### **(d) Approval of State program; withdrawal**

If the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this subchapter, sections 1232 and 1240 of this title excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection (a) of this section.

### **(e) Contents of State Reclamation Plan**

Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this subchapter.

### **(f) Annual application for support; contents**

On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;

(3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;

(4) an estimate of the cost for each proposed project;

(5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(6) an identification of lands or interest therein to be acquired and the estimated cost; and

(7) in each year after the first in which a plan is filed under this subchapter, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed.

**(g) Costs**

The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

**(h) Grant of funds**

Upon approval of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 1253 of this title, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to section 1232(g) of this title and which are necessary to implement the State reclamation program as approved by the Secretary.

**(i) Program monitorship**

The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

**(j) Annual report to Secretary**

The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this subchapter. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this subchapter.

**(k) Eligible lands of Indian tribes**

Indian tribes having within their jurisdiction eligible lands pursuant to section 1234 of this title or from which coal is produced, shall be considered as a "State" for the purposes of this subchapter except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes.



## **(I) State liability**

No State shall be liable under any provision of Federal law for any costs or damages as a result

## **USC 1240. Emergency powers**

(a) The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the Secretary makes a finding of fact that—

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however,* That this provision is not intended to create new rights of action or eliminate existing immunities.

## **USC 1240a. Certification**

### **(a) Certification of completion of coal reclamation**

(1) The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 1235 of this title may certify to the Secretary that all of the priorities stated in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

(2)

(A) The Secretary may, on the initiative of the Secretary, make the certification referred to in paragraph (1) on behalf of any State or Indian tribe referred to in paragraph (1) if on the basis of the inventory referred to in section 1233(c) of this title all reclamation projects relating to the priorities described in section 1233(a) of this title for eligible land and water pursuant to section 1234 of this title in the State or tribe have been completed.

(B) The Secretary shall only make the certification after notice in the Federal Register and opportunity for public comment.

**(b) Eligible lands, waters, and facilities**

If the Secretary has concurred in a State or tribal certification under subsection (a) of this section, for purposes of determining the eligibility of lands and waters for annual grants under section 1232(g)(1) of this title, section 1234 of this title shall not apply, and eligible lands, waters, and facilities shall be those—

(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

**(c) Priorities**

Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) of this section shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 1233 of this title):

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

(3) The restoration of land and water resources and the environment previously de-graded by the adverse effects of mineral mining and processing practices.

**(d) Specific sites and areas not eligible**

Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

**(e) Utilities and other facilities**

Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by

coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c) of this section.

**(f) Public facilities related to coal or minerals industry**

Notwithstanding subsection (e) of this section, where the Secretary has concurred in the certification referenced in subsection (a) of this section and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 1232(g)(1) of this title to carry out such activities or construction.

**(g) Application of other provisions**

The provisions of sections 1237 and 1238 of this title shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 1237 and 1238 of this title shall not apply.

**(h) Payments to States and Indian tribes**

**(1) In general**

**(A) Payments**

**(i) In general**

Notwithstanding section 1231(f)(3)(B) of this title, from funds referred to in section 1232(i)(2) of this title, the Secretary shall make payments to States or Indian tribes for the amount due for the aggregate unappropriated amount allocated to the State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title.

**(ii) Conversion as equivalent payments**

Amounts allocated under subparagraph (A) or (B) of section 1232(g)(1) of this title shall be reallocated to the allocation established in section 1232(g)(5) of this title in amounts equivalent to payments made to States or Indian tribes under this paragraph.

**(B) Amount due**

In this paragraph, the term “amount due” means the unappropriated amount allocated to a State or Indian tribe before October 1, 2007, under subparagraph (A) or (B) of section 1232(g)(1) of this title.

**(C) Schedule**

Payments under subparagraph (A) shall be made in 7 equal annual installments, beginning with fiscal year 2008.

**(D) Use of funds**

**(i) Certified States and Indian tribes**

A State or Indian tribe that makes a certification under subsection (a) in which the Secretary concurs shall use any amounts provided under this paragraph for the purposes established by the State legislature or tribal council of the Indian tribe, with priority given for addressing the impacts of mineral development.

**(ii) Uncertified States and Indian tribes**

A State or Indian tribe that has not made a certification under subsection (a) in which the Secretary has concurred shall use any amounts provided under this paragraph for the purposes described in section 1233 of this title.

**(2) Subsequent State and Indian tribe share for certified States and Indian tribes**

**(A) In general**

Notwithstanding section 1231(f)(3)(B) of this title, from funds referred to in section 1232(i)(2) of this title, the Secretary shall pay to each certified State or Indian tribe an amount equal to the sum of the aggregate unappropriated amount allocated on or after October 1, 2007, to the certified State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title.

**(B) Certified State or Indian tribe defined**

In this paragraph the term “certified State or Indian tribe” means a State or Indian tribe for which a certification is made under subsection (a) in which the Secretary concurs.

**(3) Manner of payment**

**(A) In general**

Subject to subparagraph (B), payments to States or Indian tribes under this subsection shall be made without regard to any limitation in section 1231(d) of this title and concurrently with payments to States under that section.

**(B) Initial payments**

The first 3 payments made to any State or Indian tribe shall be reduced to 25 percent, 50 percent, and 75 percent, respectively, of the amounts otherwise required under paragraph (2)(A).

**(C) Installments**

Amounts withheld from the first 3 annual installments as provided under subparagraph (B) shall be paid in 2 equal annual installments beginning with fiscal year 2018.

**(4) Reallocation**

**(A) In general**

The annual amount allocated under subparagraph (A) or (B) of section 1232(g)(1) of this title to any State or Indian tribe that makes a certification under subsection (a) of this section in which the Secretary concurs shall be reallocated and available for grants under section 1232(g)(5) of this title.

**(B) Allocation**

The grants shall be allocated based on the amount of coal historically produced before August 3, 1977, in the same manner as under section 1232(g)(5) of this title.

**(5) Limitation on annual payments**

Notwithstanding any other provision of this subsection, the total annual payment to a certified State or Indian tribe under this subsection shall be not more than \$15,000,000.