

conducting the reclamation program; and

e. A general description of the reclamation activities to be conducted under the Montana reclamation plan;

Montana submitted these discussions to satisfy each of the requirements of 30 CFR 884.13. The Director finds that Exhibits B, C, and D satisfy the requirements of and are consistent with the Federal regulations at 30 CFR 884.13. The Director approves Exhibits B, C, and D of Montana's AMLR plan.

V. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana plan (administrative record No. MT-AML-03).

a. *U.S. Bureau of Mines (BOM)*. BOM, Washington, D.C., responded on April 19, 1995, that its Division of Environmental Technology reviewed the amendment and had no comments to provide (administrative record No. MT-AML-08).

BOM, Western Field Operations Center, located in Spokane, Washington, responded on May 3, 1995, that it had reviewed the proposed amendment (administrative record No. MT-AML-011). BOM stated that it appeared that the amendment would allow Montana to redirect funds from non-coal reclamation to coal-related reclamation in a consistent, predictable manner. BOM stated further that, although SMCRA funds are intended primarily for coal-related reclamation, and the amendment supports that objective, some funds should probably continue to be spent on environmental problems at hardrock mine sites.

b. *U.S. Bureau of Indian Affairs (BIA)*. BIA responded on April 25, 1995, that it had reviewed the subject amendment, and had no problem with the concept (administrative record No. MT-AML-010). However, BIA pointed out in its response that the "set-aside" funds should be available for on-reservation, as well as off-reservation, use when the need arises. OSM responds that funds

collected from coal mined on Montana State lands are distributed to the State of Montana as State-share AMLR funds, while funds collected from coal mined on Indian lands are distributed to the appropriate Indian tribes. Montana's State-share funds would be available for use by Montana for reclamation activities on State lands. OSM administers the Federal program for surface coal mining and reclamation operations on Indian lands and provides through the Federal program funding for reclamation activities on Indian lands.

c. *U.S. Army Corps of Engineers*. By letter dated May 9, 1995, the U.S. Army Corps of Engineers stated that it reviewed the proposed amendment and found it to be satisfactory (administrative record No. MT-AML-012).

d. *Environmental Protection Agency (EPA) Concurrence and Comments*. OSM solicited EPA's concurrence and comments on the proposed amendment (administrative record No. MT-AML-04). EPA did not respond to OSM's request.

e. *Montana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*. OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record No. MT-AML-03). ACHP did not respond to OSM's request. The SHPO responded on April 24, 1995 (administrative record No. MT-AML-09), that it understood the "Policy and Procedures" section of the proposed amendment to require that Montana DSL (now DEQ) will coordinate OSM consultation responsibilities with the Montana SHPO for section 106 of the National Historic Preservation Act of 1966 (NHPA) review. OSM notes that the language at Section A, III(A)(1) concerning "Policies and Procedures" requires the Montana DEQ to consult and coordinate with Federal, State, and local agencies during project planning in order to insure compliance with environmental rules and regulations and that NHPA is included in the list of critical elements requiring consultation (see finding No. 3).

The SHPO further stated that under section 106 of NHPA, OSM may use the services of the Montana DEQ to prepare necessary information, but OSM remains responsible for section 106 compliance. OSM concurs that in accordance with section 106 of NHPA, and absent any agreements to the contrary between OSM, the Montana SHPO, and the ACHP, OSM is the agency responsible for section 106 consultation in Montana.

The specific language at Section A, III(A)(1) in the proposed amendment requires that consultation under NHPA is with the Montana SHPO. OSM interprets this to mean that for Montana's AMLR program, Montana DEQ will consult with the Montana SHPO to the extent that DEQ has a role in the consultation process. As required under 30 CFR 884.14(d)(1), a State must provide a description of the relationship of the designated agency conducting the State's reclamation program to other State organizations or officials that will participate in or augment the designated agency's reclamation capacity. Accordingly, OSM reviewed the "Policies and Procedures" section of the proposed amendment in the context of the requirements at 30 CFR 884.14(d)(1) and determined that the consultation with the SHPO describes a specific relationship between the Montana DEQ and another State agency that will participate in or augment the capacity of the Montana DEQ in implementing Montana's AMLR program. OSM still remains responsible for consultation with the SHPO and ACHP under section 106 of NHPA. Therefore, in response to this comment, the Director requires no further changes to Montana's plan.

f. *Mine Safety and Health Administration (MSHA)*. MSHA stated in its response dated June 2, 1995, that MSHA personnel had reviewed the amendment and it did not appear to conflict with any current MSHA regulations (administrative record No. MT-AML-16).

VI. Director's Decision

Based on the above findings, the Director approves Montana's proposed plan amendment as submitted on March 22 and April 5, 1995. The Director is also taking this opportunity to (1) provide an effective date for the approval of the Montana plan at 30 CFR 926.20, (2) change the name of the designated regulatory authority in Montana and correct the codification of the paragraphs within section 30 CFR 926.20 for the locations of the publicly available copies of the Montana plan, and (3) add a new section at 30 CFR 926.25 for amendments to the Montana plan.

As discussed in finding No. 1, the Director approves the provisions concerning (1) reclamation of interim program and bankrupt surety coal sites, (2) a set-aside program, and (3) water supply facilities and water replacement proposed to be added to Montana's AMLR Plan.

As discussed in finding No. 2, the Director approves Exhibit A concerning