H.R. 5479, COAL ACCOUNT-ABILITY AND RETIRED EMPLOYEE ACT OF 2010

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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LEGISLATIVE HEARING ON H.R. 5479, TO AMEND THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 TO PROVIDE FOR USE OF EXCESS FUNDS AVAILABLE UNDER THAT ACT TO PROVIDE FOR CERTAIN BENEFITS, AND FOR OTHER PURPOSES. "COAL ACCOUNTABILITY AND RETIRED EMPLOYEE ACT OF 2010"

Wednesday, June 23, 2010
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:02 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Holt, Christensen, Inslee, Hastings, Smith, and Lummis.

STATEMENT OF THE HON. NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. The Committee on Natural Resources will come to order. I would begin by observing that while the horrific disaster which took place at the Upper Big Branch Coal Mine in my home county of Raleigh, West Virginia, has largely been swept from the national spotlight by the explosion of the Deepwater Horizon rig in the Gulf of Mexico, it continues to weigh heavily on the citizens of West Virginia and throughout the coalfields. Federal and state investigations are proceeding, and we in the Congress are developing a legislative response to ensure a more safe working environment for our nation's underground coal miners—brave and hardworking souls, every one of them.

While the country continues to focus on the Gulf of Mexico and the impact that spill is having on so many businesses, on the people and the economy of that region, I do believe and, in fact, I insist that we, as a nation, continue to address the plight of the coal miner and the economy of coalfield communities in the Appalachian Region, and that is what we are doing this morning. Today the Committee is meeting for the consideration of H.R. 5479, The

Coal Accountability and Retired Employee Act of 2010, or the CARE Act.

This legislation keeps faith with an historic Federal commitment made to the mine workers in 1946. At the time, with President Harry Truman looking on, Interior Secretary Julius Krug signed an agreement with the UMWA President John L. Lewis guaranteeing the health and welfare of the coal miner. The Krug-Lewis agreement was the very foundation for a welfare and retirement system established for the mine workers and their dependents. This Federal guarantee to the mine workers also served as the basis for the 1992 Coal Act, in which through my efforts Congress authorized a transfer of interest accruing to the account to the unspent balance of the Abandoned Mine Reclamation Fund for the purpose of providing solvency to UMWA's health care fund.

At the time, because so many companies had escaped their responsibility under the National Bituminous Coal Wage Agreement, over 60 percent of the people who received their health care under the UMWA's program never worked for the coal operators, who were making premium payments. This large "orphaned" miner population threatened to overwhelm the entire system. The 1992 legislation threw a lifeline to the health care fund for several years, but as more and more coal companies abrogated their responsibilities, Congress was compelled to act again in the 2006 amendments to the Abandoned Mine Reclamation Program, which provides transfers of general funds to ensure the solvency of the UMWA's three health care plans.

The problems which plagued the UMWA health program in the past are now afflicting their pension plan. At present, well over half of the current retirees never worked for the coal companies currently participating in that plan. This situation, as well as the recent economic downturn, has placed the pension plan on the road to insolvency. At stake are the pensions of over 120,000 people, around 38,000 who reside in my home state of West Virginia, and the economic viability of the contributing coal companies.

Think about that. These hardworking people who engaged in the noble but often dangerous occupation of mining coal for the energy security of this country now may find, in their elderly years, dilemma and confusion when it comes to the security of their pensions. I fought long, I fought hard, and I was relentless in my efforts to get these coal miners the health care they deserve, and I will not allow their pensions to be threatened. This matter has been the first thing on my mind when I wake up in the morning, and it is in my prayers every evening.

The pending legislation would tap into these funds made available by the 2000 amendments to the Abandoned Mine Reclamation Program that are not necessary for any current law obligation, and transfer those amounts to the UMWA pension fund in order to ensure its solvency. I have spent a career standing up for our coal miners, their widows, and our coalfield communities, whether it be black lung benefits, coal mine safety, or health care, and I will tell you this, I will fight for these individuals' pensions with every breath in my body.

I would like to particularly thank UMWA President Cecil Roberts for being here this morning. He is the President of a union with a proud tradition, and one which has pioneered many things in the American workplace that we take for granted today, such as the eight-hour workday and collective bargaining rights. Cecil Roberts' every breath of air is devoted to what is just and good for our nation's coal miners, across the coalfields and across this world.

I commend him, I thank him for his expertise, for his professionalism and, most importantly, for the friendship that he has bestowed upon this Chairman and so many of us in the coalfields from whence he comes. Our second panelist this morning will be Mr. David Young, an individual I have known for quite a while as well, President of the Bituminous Coal Operators' Association, and an individual who knows coal and knows our coalfield communities intimately as well. I would now recognize the Ranking Member before we move on to the panel.

Mr. HASTINGS. Thank you, Mr. Chairman. Mr. Chairman, I don't have an opening statement and I intended to yield my time to Mrs. Lummis from Wyoming, and if we could do that when she arrives I would appreciate that courtesy, but I have no opening statement myself.

The CHAIRMAN. The Chair will recognize Mrs. Lummis as soon as she arrives. And pending that, we will move on with our panel. I have already introduced him, Mr. Cecil Roberts, President of the United Mine Workers of America, and Mr. David Young, President of the Bituminous Coal Operators' Association. Gentlemen, we do have your prepared testimony and it will be made a part of the record as if actually read, and you may proceed as you desire. Cecil, you want to start?

[The prepared statement of Chairman Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources

The Committee on Natural Resources will come to order. I would begin by observing that while the horrific disaster which took place at the Upper Big Branch coal mine in my home county of Raleigh, West Virginia, has largely been swept from the national spotlight by the explosion of the Deepwater Horizon rig in the Gulf of Mexico, it continues to weigh heavily on the citizens of West Virginia and throughout the coalfields.

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Today, the committee is meeting for the consideration of H.R. 5479, the "Coal Accountability and Retired Employee Act of 2010" or the CARE Act. This legislation keeps faith with an historic federal commitment made to the mineworkers in 1946.

At the time, with President Harry Truman looking on, Interior Secretary Julius Krug signed an agreement with UMWA President John L. Lewis guaranteeing the health and welfare of the coal miner. The Krug-Lewis Agreement was the very foundation for a welfare and retirement system established for the mineworkers and their dependents.

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I have spent a career standing up for the coal miner, their widows and coalfield communities. Whether it be black lung benefits, coal mine safety, or health care. And I will tell you this: I will fight for these people’s pensions with every breath in my body.

I would like to particularly thank UMWA President Cecil Roberts for being here this morning. He is the president of a union with a proud tradition, and one which pioneered many things in the American workplace that we take for granted today such as the eight-hour workday and collective bargaining rights.

STATEMENT OF CECIL E. ROBERTS, PRESIDENT, UNITED MINE WORKERS OF AMERICA

Mr. ROBERTS. Thank you very much, Mr. Chairman, for allowing the United Mine Workers to participate in this hearing today and thank you for scheduling the hearing. Let me begin by thanking you, not only for the hearing today but the friendship that you and I have had for over 30 years now, and the efforts that you have made on behalf of coal miners, one of which was my dad who we know passed away a couple years ago, and he died with dignity, had the best health care in the world. And one of the widows who receives a pension that we are going to talk about today happens to be my mother who will be 91 here in a few weeks.

So, this is not only something that is an institutional question for us, this is a very personal situation for every member of United Mine Workers. In West Virginia, Pennsylvania, Ohio, Kentucky, wherever we are from, we all have someone who is drawing a pension and we all have someone that has health care. We did an analysis in the last month, and about 152,000 Americans who live in the coalfields have health care, and I think they can look to you, Mr. Chairman, that over 100,000 of them have health care as a direct response to what you have done in this Congress.

I still remember meeting with you in 1992 when you came up with the concept of using the interest money to help pay the health care benefits that were guaranteed as you said in 1946 in Harry

Truman's White House. And I appreciate the fact that you have continued to fight not only for health care but for the safety of all coal miners, and I just wanted to reiterate what you just said, our hearts and prayers go out today to the 29 families from Upper Big Branch. While this was a non-union mine, I have said frequently that we all know one another.

In the coalfields I was personal friends with some of these miners who passed away, and our prayers are with those miners and we appreciate very much your hard work in trying to make the mines in this country safe and for the black lung victims, we know over 100,000 miners have died from pneumoconiosis in this country, and you have been a champion to provide benefits and safer workplaces for those people. We come today, Mr. Chairman, it is somewhat ironic, the history of the coalfields has been one of conflict if you go back to the early days, and quite frankly even occasionally today.

But the problem we come today with is not of the making of the Union and it is not the making of the coal industry, and it certainly wasn't something that the pensioners and the beneficiaries of this fund created. The fund that we are going to talk about here today or we will be talking about today at the time of the signing of the last collective bargaining agreement had over $6 billion in assets and was about 94 percent funded. There is only one event, only one, that has occurred since the signing of this collective bargaining agreement to the present to change the funding status of this, and that was the recession that hit in 2008.

It is ironic as we come here today that we have chosen, and we respect decisions of Congress to bail out Wall Street, we see the CEOs that made the decisions that led to the financial downfall of our economy now getting bonuses, I don't fault them for that. But the decisions that they made have adversely affected a lot of people in this country, and I find it very tragic that it is affecting hardworking coal miners, it is adversely affecting or could adversely affect people who are in their 90s. Some people in this fund are as old as 100 years old.

A few years ago we did an analysis of this fund and found that the oldest beneficiary was 112, unfortunately that lady has passed away since we did that analysis, but I can say to you today if we did another analysis, we will find someone in this fund that is at least 100 years of age. I think that people depend greatly—in fact, I know they depend greatly—on these pension checks. I want to point out to the Committee that in the last ten years $6 billion has been paid to retirees or their widows, most of this in Appalachia.

The people, the states that receive the most from this are states, I think West Virginia is first, I think Pennsylvania is second, I believe Kentucky is third, and I believe Virginia is fourth. A lot of hand loading went on in the old days in these areas, at one time coal mining was very labor intensive. And that is not the case now, it is highly mechanized, longwalls producing lots and lots of coal with very few people. So, today we come and, as the Pension Protection Act tells us, we have to do certain things—one of which would be to increase funding to this plan and ask the coal industry that did nothing wrong to pay as much as $20 an hour into this fund, which would bankrupt some of them, put people out of work, and perhaps lead to total collapse of this fund.

The other thing is eventually you get around to the possibility of reducing benefits. I have to tell you what I told our members, I am not going to be a person who supports the cutting of benefits for people who have earned them. These people have given their lives to this industry, we have all benefitted from this, all of us. Fifty percent of the electricity in this country comes from coal, our economy is being fueled off the backs of these coal miners who are now retired, and their widows who are now surviving, and I think this nation made a promise to these people and this promise should be kept. And I will be glad to answer any questions that you have, Mr. Chairman.

[The prepared statement of Mr. Roberts follows:]

Statement of Cecil E. Roberts, President, United Mine Workers of America

Mr. Chairman and Members of the Committee:

I want to thank you for the opportunity to be here today to speak on behalf of over 120,000 current and former UMWA members who are participants in the UMWA 1974 Pension Plan. Let me state at the outset that the UMWA strongly supports H.R. 5479 and urges the Committee and the Congress to enact it as soon as possible.

The 1974 Pension Plan is a Taft-Hartley multiemployer pension plan negotiated between the UMWA and the Bituminous Coal Operators' Association (BCOA). It is part of the UMWA Health and Retirement Funds, a separate institution jointly administered by trustees appointed by the UMWA and BCOA. The 1974 Plan provides pension benefits to coal miners who work under the National Bituminous Coal Wage Agreement (NBCWA). Other funds administered by the UMWA Health and Retirement Funds provide health benefits to retired coal miners and their dependents under the Coal Act and the NBCWA.

When the last NBCWA was negotiated at the end of 2006, the 1974 Plan had approximately $6 billion in assets and was about 93% funded. As of May 31, 2010 the 1974 Plan had total assets of $4.3 billion and its funding level has fallen below 80%. It currently pays out about $650 million per year in pension benefits to some 97,500 retired and disabled miners and surviving spouses. Employers operating under the NBCWA of 2007 are currently contributing $5.00 per hour worked by their UMWA-represented employees. The rate will increase to $5.50 in January 2011. Under the provisions of the Pension Protection Act (PPA), because the plan's funding level is below 80%, the UMWA and the BCOA as plan sponsors will have to adopt funding improvement plans that may raise contribution rates to $20 per hour worked by UMWA members. If such rates are required, signatory employers may seek to withdraw from the plan or go out of business.

I have attached a chart to this statement that shows projections of the funded status of the plan made by the 1974 Plan's actuary in December 2007 and then again in October 2009. You'll note that prior to the financial crisis the 1974 Plan was well funded at about 93% and was projected to steadily improve its funded status throughout the coming decade. This projection, shown as the green line on the chart, was done at the end of 2007 before the credit crisis led to the financial meltdown on Wall Street. Now look at the same projection made in late 2009, shown as the red line. As you can see, instead of being in good shape for as far as the actuary could project, the 1974 Plan is now on a steady downward path. Only one thing changed in that intervening period between these two projections–the 2008 financial crisis caused markets to fall precipitously and placed the country in the worst economic slump since the Great Depression.

As I mentioned, the 1974 Plan currently pays out about $650 million per year in pension benefits to retired miners and surviving spouses. Due to the demographics of the coal industry this represents the period of our highest payout. The loss of assets in 2008 due to the financial crisis could not have come at a worse time for the 1974 Plan. The second chart attached to the statement shows the assets and liabilities of the 1974 Plan over the last fifteen years. As you'll note the economic decline in the aftermath of 9/11 terrorist attacks led to declines in the value of the Plan's assets in 2002 and 2003. But the assets of the Plan stayed relatively close to the liabilities. With the sharp market declines due to the 2008 financial crisis, the Plan has developed a significant separation between assets and liabilities, one that is not expected to close even with a return to less volatile financial markets.

The 1974 Pension Plan finds itself in dire financial straights solely as a result of the financial crisis of 2008. While it has been well managed and in good financial shape for many years, the market crash in 2008 and early 2009 left the 1974 Plan with a significant loss of assets just at the time of its greatest payout. Indeed, the trustees who govern the 1974 Plan and the investment professionals they employ have done an exemplary job investing the Plan's assets over many years. They have a well diversified portfolio of investments that has produced returns comparable to or better than many of their pension industry peers. However, the 2008 financial crisis left such a deep hole for the Plan that, without a significant increase in income, the plan's actuaries project that the financial condition of the plan will continue to erode.

The UMWA 1974 Pension Plan grew out of a contract between the federal government and the UMWA at a time of government seizure of the nation's bituminous coal mines in 1946. The Krug-Lewis Agreement, named for Secretary of the Interior Julius Krug and UMWA president John L. Lewis, was signed in the White House under the watchful eye of President Harry S. Truman. The Krug-Lewis agreement called for the creation of a Retirement fund to provide for payments to miners for disability, death or retirement and a Medical and Hospital fund to provide medical, hospital and related services.

The Retirement fund created by the Krug-Lewis agreement became the object of intense dispute between the UMWA and the coal operators (when the government returned the mines to private control) and as a result, pension payments were delayed for several years. It was only after intervention by the Speaker of the House of Representatives and the appointment of Senator Styles Bridges of New Hampshire as the neutral trustee that pension payments were activated in 1950. Since that time, the 1974 Pension and its predecessors have provided pension benefits to hundreds of thousands of retired coal miners. The federal government has had a long history of involvement with the UMWA Health and Retirement Funds. Both Democratic and Republican administrations, as well as Democratic and Republican Congresses, have recognized the special promise contained in the agreement between the federal government and the coal miners. And while there were times when the fulfillment of that promise was in doubt, each time Congress and the president have risen to the occasion and ensured that the promise was kept.

The retirees and surviving spouses who depend on the 1974 Pension Plan live in all 50 states, but the majority of them still reside in the coal mining states of West Virginia, Pennsylvania, Kentucky, Illinois, Virginia, Alabama, Ohio and Indiana. A state by state breakdown of active, retired and terminated vested participants is attached to this statement. Many of the retirees are elderly with nearly 40% of the retired population over 75 years of age and about 17% of the population over 85 years of age. The 1974 Plan provides them with modest but crucial income. The average pension benefit for a retired miner currently receiving benefits from the 1974 Pension Plan is $590 per month and for a surviving spouse the average benefit is about $304 per month.

The financial crisis of 2008 and its economic aftermath were not the fault of the retired miners. Nor was it the fault of their representatives in the UMWA or the coal operators with whom we bargain. The cause of the financial crisis lay primarily with the banks and other large financial institutions on Wall Street. While the very same institutions that created the crisis were bailed out with taxpayer money, the victims of the crisis such as pension funds have been left to their own devices.

An analysis of the 1974 Plan shows that a significant portion of the Plan's population and liabilities are related to companies that are now defunct and no longer contribute to the Plan. About 40% of the Plan's liabilities are related to retirees whose employers no longer contribute to the 1974 Plan; nearly 54% of the 1974 Plan population is composed of participants whose employer no longer contributes to the plan. So the 1974 Pension Plan is dealing with the same orphan retiree problem that Congress has grappled with in the Coal Act.

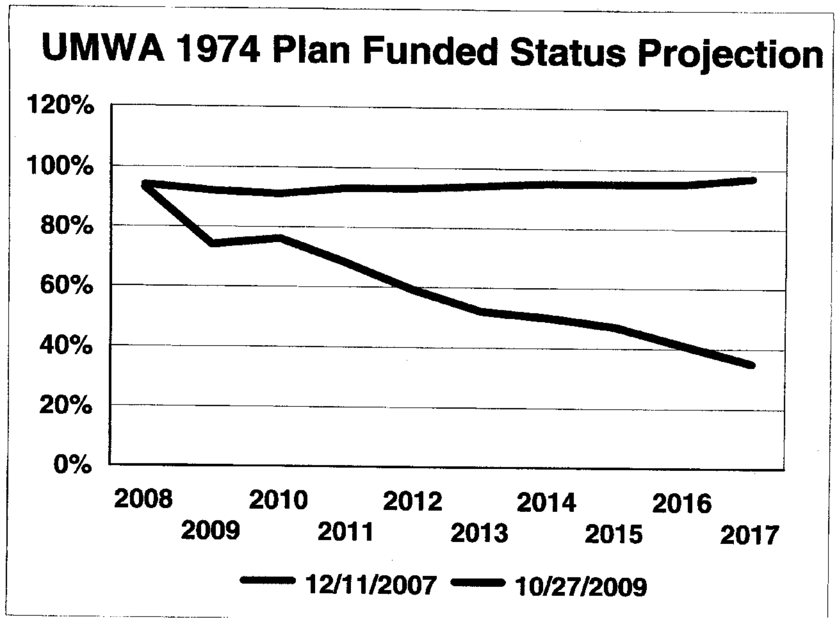
The 2007 National Bituminous Coal Wage Agreement (NBCWA) is scheduled to expire on December 31, 2011. The Pension Protection Act enacted in 2006 requires multiemployer pension plans to maintain a certain level of funding or face consequences. Generally, this is 80% funding for multiemployer plans. Plans that fall below this level are considered in "endangered" status. Plans that fall below 80% and have an Accumulated Funding Deficiency in the next six years are considered "seriously endangered." Plans that fall below 65% funding and have a projected AFD in the next four years are considered in "critical"status. Under the PPA, plans that fall into endangered or critical status must adopt funding improvement or rehabilitation plans to reduce the underfunding over the next ten to fifteen years. These plans may involve increases in contributions by employers, reduction or elimination of certain benefits, or a combination of both. As noted earlier, the 1974 Plan's actuarial projections indicate that a contribution rate of about $20 per hour may be necessary to satisfy the PPA. As a bargainer I don't like making public predictions about what positions my bargaining partners may take in negotiations. But I will say that if the law requires coal operators a choice of paying $20 per hour or attempting to withdraw from the plan, many of them will be tempted to try to withdraw. The UMWA, of course, will seek to prevent that. The conflict that will result if employers seek to abandon the 1974 Plan will not be in the best interests of any of the parties to the contract, the coal field communities or the nation at large. The UMWA wants to avoid disruption in the nation's coal fields when the NBCWA expires in 2011. But we will take whatever actions are necessary and within our power to protect the 1974 Pension Plan and the more than 120,000 miners and widows who depend on it for economic sustenance. It may well be that conflict in the coal fields cannot be avoided; but we believe that H.R. 5479 offers a better way forward.

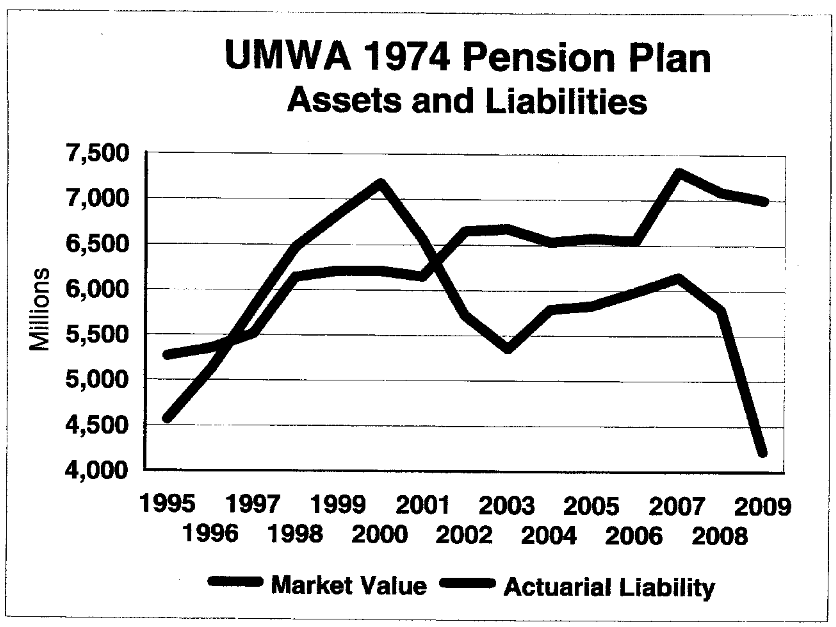
H.R. 5479 simply builds on the framework and mechanisms Congress has put in place to deal with the problem of orphan retiree health care benefits in the coal industry. It provides for the transfer to the 1974 Pension Plan of funds that exceed the amounts needed to meet existing obligations to the States and the UMWA Health and Retirement Funds retiree health plans under Title IV of the Surface Mining Control and Reclamation Act of 1977. In 2006, Congress amended Title IV to provide for a permanent appropriation of up to $490 million a year to repay 50% of the Abandoned Mine Land (AML) reclamation fees generated from certified States that have completed abandoned coal mine reclamation projects and to supplement interest earned on the AML fund to ensure the solvency of the three health plans administered by the UMWA Health and Retirement Funds. I want to point out that allowing the 1974 Plan to access the permanent appropriation would in no way jeopardize payments to the States or to the retiree health plans. They would continue to have first priority claim to the permanent appropriation. Under H.R. 5479, only funds not needed to fulfill those existing obligations would be available to the 1974 Plan.

Mr. Chairman, a promise was made to the nation's coal miners in the White House long ago in 1946. That promise was that if the miners produced the energy that the nation so desperately needed, they would have pensions and health care when they retired so they could live out their lives with a small measure of dignity and security. I submit that coal miners have earned these benefits through hard work that has allowed many Americans to enjoy a better life. We only have to look at the recent disasters in the coal fields, such as the Sago mine and Upper Big Branch tragedies in West Virginia and the Crandall Canyon mine in Utah to know how dangerous the work of coal mining can be. While these tragedies draw public attention, many miners die quietly without notice each year from black lung disease. The National Institute for Occupational Safety and Health (NIOSH) estimates that up until a few years ago as many as 1,500 miners died each year from complications of black lung. That's a Titanic going down in the coal fields each and every year. All told, NIOSH estimates that more than 10,000 miners died of black lung disease in the last decade. I think any reasonable observer would agree that coal miners work in harsh conditions that endanger their lives in many ways. They should not have to worry about the modest pensions that have been promised them after they retire.

The miners who depend on the UMWA Health and Retirement Funds and the 1974 Pension Plan have upheld their part of the bargain made in President Truman's White House. Now, through no fault of their own, their pension plan has fallen into financial difficulty. Congress has already seen fit to permanently appropriate up to $490 million per year to fulfill the promise of retiree health care for these same retirees. It appears likely that because of the efficiency with which the UMWA Funds delivers medical care, the full amount will not be needed each year. We think it makes good sense to extend the application of that commitment to the 1974 Pension Plan. We urge the Committee and the Congress to enact H.R. 5479 to ensure that the promise is kept to the nation's coal miners.

We appreciate the opportunity to be here today and would be happy to answer any questions you may have.


UMWA 1974 Plan Funded Status Projection
120%
100%
80%
60%
40%
20%
0%
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
12/11/2007
10/27/2009


UMWA 1974 Pension Plan
Assets and Liabilities
Millions
7,500
7,000
6,500
6,000
5,500
5,000
4,500
4,000
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
Market Value
Actuarial Liability

UMWA 1974 Pension Plan Participants

State	Count
Armed Forces Overseas	13
Alaska	26
Alabama	9,256
Arkansas	133
Arizona	173
California	148
Colorado	682
Connecticut	14
District of Columbia	11
Delaware	28
Florida	1,277
Georgia	271
Hawaii	7
Iowa	17
Idaho	20
Illinois	11,020
Indiana	3,557
Kansas	205
Kentucky	12,233
Louisiana	18
Massachusetts	9
Maryland	346
Maine	7
Michigan	155
Minnesota	15
Missouri	785
Mississippi	41
Montana	35
North Carolina	1,100
North Dakota	9
Nebraska	7
New Hampshire	6
New Jersey	54
New Mexico	391
Nevada	66
New York	107
Ohio	8,016
Oklahoma	263
Oregon	22
Pennsylvania	18,132

Puerto Rico	3
Rhode island	7
South Carolina	378
South Dakota	4
Tennessee	1,387
Texas	208
Utah	1,795
Virginia	9,598
Virgin Islands	1
Vermont	1
Washington	72
Wisconsin	33
West Virginia	38,052
Wyoming	91
Non-USA	19
Total	**120,324**

Note: Pension counts include active, retired and terminated vested particip

The CHAIRMAN. Thank you, Cecil, I will have some questions, but per the request of the Ranking Member and before going to you, Dave, I would like to recognize the gentlelady from Wyoming.

Ms. LUMMIS. Thank you very much, Mr. Chairman.

The CHAIRMAN. For any comments, opening statement you would like to make.

STATEMENT OF THE HON. CYNTHIA M. LUMMIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. LUMMIS. I so appreciate this opportunity and want to welcome our panel this morning as well. Thank you, Mr. Chairman, and thank you, Mr. Hastings, for yielding to me. The nation's leader in coal is Wyoming, and we have a vested interest in the fate of the AML Program. Since AML's creation in 1977, Wyoming has worked diligently to reclaim mining sites on over 32,000 acres. This work was done despite the Federal Government's failure to distribute AML funds to the states as required by law.

Finally, under the bipartisan leadership of the Chairman of this Committee and others, a bipartisan agreement was reached in 2006 that finally granted Wyoming, West Virginia, and other states what the Federal Government had co-opted for nearly 30 years. Chairman Rahall's understanding of this complicated history of AML has resulted in the carefully crafted legislation under consideration by the Committee today.

As currently written and absent other interference, it appears the legislation would have no effect on the historic agreement reached in 2006 on certified states and tribes. I commend the

Chairman for his artful drafting of this bill. Having said that, I have two concerns that I sincerely hope the Chairman will consider. There were many, including the Chairman himself I would suspect, who hoped that following passage of the 2006 agreement, this issue had finally been put to rest for the good of everyone involved. Unfortunately, that has not been the case, the program has continued to be the target of those who do not understand the promises made and broken by the Federal Government throughout the history of AML.

The sharks continue to circle, Mr. Chairman, and I am deeply concerned that passage of this legislation will give opponents the opening they have been seeking. On a more philosophical level, the intent of the legislation under consideration helps to highlight what is a very troubling trend. From so called agency guidance to coal lash to permit suspensions and delays to Clean Air and Water Act revisions and more, the Obama Administration has worked overtime to hinder domestic coal production. The only possible outcome of these policies is a crippled industry unable to hire new workers of any kind.

Again, I have great respect for the Chairman of this Committee. His leadership on the AML Program is undisputed. I understand his desire to shore up a failing pension plan for coal miners. However, if we were truly concerned about the fate of America's hardworking coal miners, we would also be working night and day to beat back the onslaught from an Administration hell-bent on halting coal production altogether. I look forward to working with the Chairman on all of these issues in the weeks ahead. And, Mr. Chairman, again, I am thankful for the opportunity to present my statement. I yield back.

[The prepared statement of Ms. Lummis follows:]

Statement of The Honorable Cynthia M. Lummis, a Representative in Congress from the State of Wyoming

Thank you Mr. Chairman, and thank you Mr. Hastings for yielding me the time.

As the nation's leading producer of coal, Wyoming has a vested interest in the fate of the Abandon Mine Lands (AML) program. Since AML's creation in 1977, Wyoming has worked diligently to reclaim mining sites on over 32,000 acres. This work was done despite the federal government's failure to distribute AML funds to the states as required by the law. Finally, and under the leadership of the Chairman of this Committee and others, a bi-partisan agreement was reached in 2006 that finally granted to Wyoming, West Virginia, and other states what the federal government had co-opted for nearly 30 years.

Chairman Rahall's understanding of the complicated history of AML has resulted in the carefully crafted legislation under consideration by the Committee today. As currently written, and absent other interference, it appears the legislation would have no affect on the historic agreement reached in 2006 on certified states and tribes. I commend the Chairman for his artful drafting of this bill.

Having said that, I have two concerns that I sincerely hope the Chairman will consider today. There were many, including the Chairman himself I would suspect, who hoped that following passage of the 2006 agreement this issue had finally been put to rest for the good of everyone involved. Unfortunately, that has not been the case. The program has continued to be the target of those who do not understand the promises made, and broken, by the federal government throughout the history of AML. The sharks continue to circle, Mr. Chairman, and I am deeply concerned that passage of this legislation will give opponents the opening they've been seeking.

On a more philosophical level, the intent of the legislation under consideration helps to highlight what is a very troubling trend. From so-called agency "guidance," to coal ash, to permit suspensions and delays, to Clean Air and Water Act revisions and more, the Obama Administration has worked overtime to hinder domestic coal production. The only possible outcome of these policies is a crippled industry unable to hire new workers of any kind.

Again, I have great respect for the Chairman of this Committee; his leadership on the AML program is undisputed. I understand his desire to shore up a failing pension plan for coal miners. However, if we were truly concerned about the fate of America's hardworking coal miners, we would be working night and day to beat back the onslaught from an Administration hell bent on halting coal production altogether.

I look forward to working with the Chairman on all of these issues in the weeks ahead.

The CHAIRMAN. Thank you. Let us proceed with our panel. I have already introduced Mr. Dave Young. Dave?

STATEMENT OF DAVID M. YOUNG, PRESIDENT, BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

Mr. YOUNG. Mr. Chairman and Members of the Committee, I am pleased to be here this morning to testify on a matter of critical importance to the organized coal industry. As President of the Bituminous Coal Operators' Association, the BCOA represents its member companies in collective bargaining with negotiations for the National Bituminous Coal Wage Agreement with the United Mine Workers of America. The BCOA is also the management settlor of the UMWA 1974 Pension Plan, a multi-employer pension plan created by the National Bituminous Coal Wage Agreement.

I am here today to testify in support of H.R. 5479, The Coal Accountability and Retired Employee Act of 2010. H.R. 5479 would make available funds generated by the provisions of the Surface Mining Act of 2006 to the 1974 plan to offset funding needed for the losses caused by the 2008 market collapse. This legislation is necessary to protect the pensions of the 1974 Pension Plan beneficiaries and to avoid either a plan insolvency or plan termination under Title IV of ERISA.

Prior to the 2008 market collapse, as referenced by President Roberts earlier, the Plan was 94 percent funded and on a clear path to full funding. However, the combination of the 2008 market decline on plan net assets and the Plan being in its peak cash flow years today that require nearly $700 million annually to meet pension benefit obligations means that the restoration of prior funding levels really is no longer realistic today.

The root cause of the Plan's difficulty has been a persistent decline in the number of contributing employers really since the 1970s, which in a large part reflects the shift in coal production from east to west in response to governmental environmental policy at that time. The result is that today the 1974 plan is nearly a 12-to-1 ratio of retirees to active miners. This imbalance clearly creates a crushing financial burden for the remaining contributing employers.

The result is today a last man's club of only ten employer groups supporting the pension benefits of over 110,000 retirees. Yet the signatory contributing employers of these groups only employ 10,000 representative active miners themselves. I should note that about one-third, or 33,000, of the pension beneficiaries as we have discussed are really widows of retired miners, and nearly 10,000 of these retirees are totally disabled miners.

Passage of H.R. 5479 will allow these remaining signatory employers to continue funding pension benefits for all of their current and former employees, and at the same time help to protect the 66,000 in our estimate retired “orphan” miners whose employers are no longer in the coal business for various reasons. The companies that currently contribute to the ’74 Pension Plan are the last line of defense for the plan and stand in the shoes of the government when it comes to funding the pension benefits of those orphan miners, who under other circumstances would already be the responsibility of the pension benefit guarantee corporation.

As an example, Bethlehem Steel entered bankruptcy a few years ago. Employees of the steel company became the responsibility of the PBGC. However, miners who retired from Bethlehem Steel at the same time remained in the 1974 Plan, and their full benefits guaranteed and funded by the remaining contributors to the ’74 Pension Plan. Mr. Chairman, as you know, the government has been deeply involved in the coal industry and with these plans since the 1940s. Indeed, the mines were seized unbelievably in 1946 with the express purpose of establishing this pension program.

The pension benefits did not start until the Speaker of the House Joseph Martin in 1948 met with the fund trustees and effected the appointment of Senator Styles Bridges as a neutral trustee. Senator Bridges then sided with John L. Lewis, the UMWA President and trustee in agreeing to a pay-as-you-go funding structure and setting the retirement age, length of service requirements that are still the core of today’s benefit program.

Together all of us, the miners, the companies, and the government, have made a great deal of difference in the lives of people in the coalfields and for our energy needs. Today we are once again at a juncture when the historic promise to these miners is in jeopardy. We believe that H.R. 5479 recognizes this stark fact and provides the best way to correct it. Thank you for this opportunity to support and protect the livelihood of the nation’s retired coal miners.

[The prepared statement of Mr. Young follows:]

Statement of David M. Young, President, Bituminous Coal Operators’ Association, Inc.

Mr. Chairman and members of the Committee. My name is David Young. I am pleased to be here this morning to testify on a matter of critical importance to the organized coal industry. I am President of the Bituminous Coal Operators’ Association (BCOA). The BCOA represents its member companies in collective bargaining negotiations for the National Bituminous Coal Wage Agreement (NBCWA) with the United Mine Workers of America. The BCOA is also the management Settlor of the UMWA 1974 Pension Plan, a multi-employer pension plan created by the NBCWA.

I am here today to testify in support of H.R. 5479, The Coal Accountability and Retired Employee Act of 2010. H.R. 5479 would make available funds generated by the provisions of the Surface Mining Act of 2006 to the 1974 Plan to offset funding needed for losses caused by the 2008 market collapse. This legislation is necessary to protect the pensions of the 1974 Pension Plan beneficiaries and to avoid either plan insolvency or plan termination under Title IV of ERISA.

Prior to the 2008 market collapse, the 1974 Plan was 94% funded and on a clear path to full funding. However, the combination of the 2008 market decline on Plan net assets and the Plan being in its peak cash flow years, that require nearly $700 Million per year to meet pension benefit obligations, means that restoration of prior funding levels is no longer realistic.

The root cause of the Plan's difficultly has been a persistent decline in the number of contributing Employers since the 1970s, which in large part reflects the shift in coal production from east to west in response to governmental environmental policy. The result is that today the 1974 Plan has a nearly 12-to-1 ratio of retirees to active miners. This imbalance clearly creates a crushing financial burden for the remaining contributing Employers.

The result is today a last man's club of only ten employer groups support the pension benefits of over 110,000 retirees; yet the signatory contributing Employers of these groups only employ 10,000 represented active miners themselves. I should note that about one-third or more than 33,000 of the pension beneficiaries are widows of retired miners and nearly 10,000 are totally disabled miners.

Passage of H.R. 5479 will allow these remaining signatory Employers to continue funding pension benefits for all their current and former employees and, at the same time, help to protect the more than 66,000 retired "orphan" miners whose employers are no longer in the coal business. The companies that currently contribute to the 1974 Pension Plan are the last line of defense for the Plan and stand in the shoes of the government when it comes to funding the pension benefits of these "orphan" miners—who, under other circumstances, would already be the responsibility of the Pension Benefit Guarantee Corporation (PBGC). For example, when Bethlehem Steel entered bankruptcy, Employees of the steel company became the responsibility of the PBGC. However, miners who retired from Bethlehem Steel remained in the 1974 Plan with their full benefits guaranteed and funded by the remaining contributing Employers.

Mr. Chairman, as you know, the government has been deeply involved in the coal industry and with these Plans since the 1940's. Indeed, the mines were seized in 1946 with the express purpose of establishing this pension program. The pension benefits did not start until the Speaker of the House Joseph Martin (R–MA) in 1948 met with the Fund Trustees and effected the appointment of Senator Styles Bridges (R–NH) as neutral trustee. Senator Bridges then sided with John L. Lewis, the UMWA President and Trustee in agreeing to a pay-as-you-go funding structure and setting the retirement age and length of service requirements that are still the core of today's benefit program.

Together, all of us, the miners, the companies and the government, have made a great deal of difference in the lives of people in the coalfields and for our energy needs. Today we are once again at a juncture when the historic promise to these miners is in jeopardy. We believe that H.R. 5479 recognizes this stark fact and provides the best way to correct it. Thank you for this opportunity to support and protect the livelihood of the nation's retired coal miners.

The CHAIRMAN. Thank you, gentlemen, both for your compelling testimony and the manner in which you presented it. Let me start by asking both of you about the types of pensions involved. We are not talking about gold-plated pensions, as we are all aware. President Roberts, you said the average pension for a surviving spouse for example is only $304 a month. So, basically, these women are getting along with their UMWA health care, their pension, Social Security, is that correct? That is what they are asked to——

Mr. ROBERTS. That is correct, Mr. Chairman.

The CHAIRMAN. That is what they are asked to live on these days in face of rising costs of everything it confronts us.

Mr. ROBERTS. Correct.

The CHAIRMAN. Let us discuss the orphan population for a moment. President Roberts, you stated that pension benefits are provided to 97,500 retired and disabled miners and nearly 54 percent of the plan population is composed of people whose employer no longer contributes to the plan. If you add in active participants and terminated vested participants, the total population is slightly over 120,000 with about 60 percent of them being orphans. Could you please explain a little bit more in detail about how this large orphan population came about?

Mr. ROBERTS. I believe I can, Mr. Chairman. If you go to what Mr. Young said about Bethlehem, at one time we know Bethlehem was one of the largest corporations in America, had at one time I think 120,000 employees. Many people may not realize this, but Bethlehem owned many coal mines in Pennsylvania and West Virginia in particular. In fact my dad's last employer was Bethenergy which was a subsidiary of Bethlehem Steel, but we know what happened with Bethlehem, they went into bankruptcy.

And one of the things that has happened here, as opposed to the Federal Government picking up the pensions of the Bethenergy workers, we have between negotiations between the Bituminous Coal Operators' Association and the Union continued to provide those benefits now. The employees of Bethlehem Steel retirees, the government has been subsidizing those pensions through the Public Benefit Guarantee Corporation under ERISA. So, we have tried and we have been successful in the coal industry to make sure the government has not had to do that.

Now it is not just Bethlehem Steel that went into bankruptcy over the years. If you go back and read the history of coal production in this country, I will take you quickly through this. In the '30s the UMWA was the largest union in the country because coal was mined by hand with a shovel, very labor intensive. I would like to go back to those employment numbers, I don't know if we would want to go back to loading coal again by hand.

But as time went on we had a mechanization period in the late '40s, early '50s, and we went from like 800 and some thousand workers down to like 300,000, and then as time went on became more and more mechanized. However, we have also gone through many, many bankruptcies and employers walking away from this industry. You will not find, that I am aware of, one single UMWA retiree being paid for by PBGC right now, unless you, I think the Anthracite miners might have, a handful of those might have fallen into that category. But the two parties sitting here have been responsible and negotiated agreements that allowed for the payment of pensions to continue for those people who worked for companies that are gone.

They are not there for us to deal with, the Union can't go and bargain with those people, they don't exist anymore. But the two parties sitting here have continued to see that those benefits arrive at the door every single month, and there are about 100,000 people, Mr. Chairman, Members of the Committee, that go to the post office or go out by the gate and reach in there and get a check that they depend on very heavily. And $6 billion in the last ten years, you talk about economic stimulus plan, that is pretty darn good when down in southern West Virginia and eastern Kentucky and Appalachia. And by the way, every state in the Union, all fifty states, have pensioners that receive benefits.

The CHAIRMAN. Thank you.

Mr. YOUNG. Mr. Chairman, can I follow up on that please?

The CHAIRMAN. Sure, sure, Dave.

Mr. YOUNG. You know, I think I can relate from my own experience in a prior life before coming to Washington about 11 years ago, I was in the coal industry about 20 years and spent time in Appalachia and Indiana and Illinois and Kentucky as well. Part of my experience was in Illinois in the early '90s. I was there and worked for Old Ben Coal at the time, we had a great operation there, we had four longwall mines and couple CM mines and super people working for us.

And along came the Clean Air Act. And we saw a lot of coal that moved from east to west, to the benefit of the Powder River Basin, strictly due to sulfur. I was selling coal at the time for $13 a ton, and you can't buy much for $13 when you get 2,000 pounds of anything, let alone coal, and we couldn't find a market for that product. And unfortunately, I mean the government has created part of this problem with the reduction in manpower and the companies that have gone bankrupt or have gone out of the business during this time period, most of whom would have been organized in the east.

And I can relate personally at that time friends of mine, people that I grew to know in Illinois, I shut down four longwall mines doing a fabulous job, safe, efficient operations, and 2,000 people went home, and I am not sure any of them have worked a day since the early '90s. And that is just one example, sir, I mean there are so many out there that would break your heart sometimes. But we did a good job, and for various reasons, Clean Air Act, we have gone to lower sulfur coal. And you know, we see a lot of effects by climate and we have a lot of unknowns even going today, where are we going to go in the coal industry today? So, we need a policy as you know, and I am sure you are going to help us get there. Thank you.

The CHAIRMAN. Very good observation, Dave. The Chair recognizes the gentleman from Washington, Mr. Hastings, who has 72 UMWA pensioners in his district.

Mr. HASTINGS. I am glad to know that. I don't know 72 of them.

The CHAIRMAN. We will get you the names and addresses.

Mr. HASTINGS. Mr. Chairman, I will yield whatever time I have to Mrs. Lummis if she has any questions.

The CHAIRMAN. The gentlelady from Wyoming is recognized, who has 91 UMWA pensioners in her district.

Ms. LUMMIS. Mr. Chairman, I would be delighted to have their names and addresses. You both have tremendous experience in the coal industry and a lifelong effort to see some of these changes through, and so my question is this. The 2000 changes to SMCRA were important—excuse me, the 2006 changes, the negotiation. How long did it take to negotiate the changes with all these interested parties? I know it was a herculean effort.

Mr. ROBERTS. Let me be the first to try to speak to that. By the way I should inform you that the first person to receive a pension check from this fund in 1946 was from Wyoming, so just a little historic note here today. And let me also, if I may, thank the leadership in Wyoming. The Governor, the people that were here from Congress at the time, never ever tried to prevent the passage of this Act without taking care of these pensioners' health care. And although there were very few people in Wyoming who were receiving these benefits, the people of Wyoming understood that we can't walk away from these, and I wanted to thank you and everyone that was in a leadership position in Wyoming and continues today for that.

This, I know this went on for years, years. I am guessing at a minimum four years, but it might have been more. The Chairman could tell you, he is doing the multiplications with his hands up there. But when we were struggling from '92 forward with respect to trying to determine how to take care of these health care benefits until we finally passed the '06 legislation, there was conversations about this all through that period, I think is the best way to answer it.

Mr. YOUNG. Let me comment, I was heavily involved, I came to town in 1999, which is close to the Chairman's ten fingers he put up there. And it was an issue at that time, it was there before I arrived, and it was number one on our list. And I also kind of woke up every morning praying about this orphan health care issue. So, then it really came together when we worked with all the states and we saw the value of the AML process and the issues that were needed in all areas, and with that I think it unified us as a group that we were able to solve the problem.

Ms. LUMMIS. Well, it is to all of your credit that it was solved, and I deeply appreciated it as well. Question for Mr. Roberts. Do you support the President's proposed changes to SMCRA? And I am talking now about the distributions in the President's 2011 budget.

Mr. ROBERTS. Excuse me, could you be a little more specific about what we are talking about?

Ms. LUMMIS. It has to do with the manner in which monies are distributed, to exclude certified states.

Mr. ROBERTS. I think the answer to that is that we don't support that. I must apologize that I am not as up to date on that as you are, but I don't think the mine workers are on record supporting—in fact, I believe we opposed it.

Ms. LUMMIS. Thank you. And one more question, are you concerned that the rewrite of the stream buffer zone rule and other actions by the Administration will adversely impact both coal mining companies and their employees, some of whom are union members?

Mr. ROBERTS. Yes, we have about, for your information, about 1,000 UMWA members in southern West Virginia doing this type work. We have worked with the industry with respect to that, we are concerned about that, yes, ma'am.

Ms. LUMMIS. Mr. Chairman, those are all the questions I have. Thank you very much.

The CHAIRMAN. Thank you. The gentleman from New Jersey, who has West Virginia in his blood, is recognized, and who also has 54 UMWA pensioners in his district.

Mr. HOLT. Well, I don't represent the entire State of New Jersey, but there certainly are some in New Jersey and, of course, many friends and acquaintances in West Virginia that I have. But more to the point, President Roberts, you make in your testimony, you state that a promise was made to the nation's coal miners in the White House long ago in 1946. I would like to draw attention to that. It is not how many members of the UMWA are in each person's district, it is, are we going to make good on our national promise, our national obligation.

The miners have held up their end in difficult times, in difficult circumstances while the energy market has changed underneath them. And we have to do our best to hold up our national obligation here, and I think the Chairman has done a fine job with this. Let me ask Mr. Roberts to put this in perspective and the declining prospects for the pension fund. How does this compare with other pension funds? There is trouble all over. I guess I would like to establish for the record that this isn't an example of individual mismanagement.

Mr. ROBERTS. I thank you for that question and I think you are making a very good point, Congressman. By the way thank you for the kind remarks about the government keeping the promises it makes, because once the government starts breaking promises I think people start losing faith in their government. But we just did a presentation throughout the country at four different conferences. In 2008 when this fund saw the dramatic decline of over $3.5 billion in assets, and no one did a thing wrong here.

This fund was 92 to 94 percent funded, we increased the contributions we asked industry to make, and those were significant amounts. The contribution rate went from almost zero to $5.50 for every hour people worked when we did the last bargaining. We acted responsibly. But we, the industry, the Union, did nothing wrong here. Certainly the pensioners did nothing wrong, the beneficiaries did nothing wrong. But we saw this collapse in '08 because of the mismanagement on Wall Street. And I commend the Congress for trying to deal with that problem also.

But to answer your question specifically, we have a chart that where almost every pension plan in the United States had this happen to them. One of the things that hasn't been mentioned here that I think would be helpful to the Committee, many of these plans will have an opportunity to recover ten years, fifteen, whatever it may take. What is significantly problematic here with this particular pension plan, we are at our peak for paying out benefits.

We are paying out $660 some million a year now, which is the highest amount we have ever had to pay out in any particular year, and we anticipate that being higher as time goes on for a period of time. At the same time, we have seen our assets dramatically reduced because of the recession. The problem is obvious here, is with the responsibility to pay these benefits you may not have the time for this fund to recover, like some plans may have that opportunity but this fund will not.

Mr. HOLT. Thank you.

Mr. YOUNG. Congressman, could I add to that also?

Mr. HOLT. Yes, Mr. Young.

Mr. YOUNG. One unique item I think of our '74 pension fund, that I have not heard from any other industry or area that I am aware, is our twelve to one ratio of all the retirees that we have out there which have certainly paid their way and done their bit to get there. And now we are down to, you know, as our organized industry is shrinking the ratio of active people to try to fund those people, we had cash in the bank, we had $6.7 billion at one point in time in the bank to make these payments. They have disappeared.

And as President Roberts has said, with the ratio of what few active people we have working for that 100,000 retirees, we just don't have time as some other industries do. We are going to be forced by the PPA to come up with a huge funding hourly rate here, which is very difficult for someone to look at a $18, $20 rate per hour for pensions, let alone the hourly rate. The coal economics in the marketplace today will not pay for that.

Mr. HOLT. Well, thank you. And in the time that I don't have remaining I will just say that I appreciate the Chairman's undertaking this. The worst that can be said about this legislation is, I think, it might not work to put the pension fund back on sound footing. But for the sake of the miners we have to try. Thank you.

The CHAIRMAN. The gentleman from Nebraska, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Actually my questions have been answered, so I would yield back.

The CHAIRMAN. Let me finish asking my questions then. In the '74 Plan, if the '74 Plan is certified as endangered or critical later this year under the Pension Protection Act of '06, funding improvement plans will have to be adopted. President Roberts, in your testimony you note that under these circumstances company contribution rates may have to rise from $5 an hour to $20 an hour. What other adjustments would have to be made?

Mr. ROBERTS. This is some new ground we are all plowing here with this 2006 Act, Mr. Chairman, and I have spent more time than I care to talk about with lawyers who are experts in this field who at any given time will say, well we really don't know what you are supposed to do with A if B happens. But you have a classification of endangered, you have a classification of seriously endangered, and the third classification is critical. Obviously when you get to critical that is the most severe declaration that could be made under this Act, and as I understand it the IRS and the Department of Labor jointly have responsibilities for enforcing this provision.

It requires us to come up with a, within 200 and some, it is a little less than a year, they give you about a little less than a year to come up with a funding mechanism to get out of endangered or in seriously endangered or in critical. Critical, if you get to that stage, not only would it mandate additional funding but adjustment in benefits. And obviously it is the same thing with seriously endangered too. Here is the thing I think we might be missing here, and I think it needs to be said. Would $20 an hour if the industry agreed to pay it fix this problem?

I fear it might make it worse. I think we are going to have fewer employers that will be standing in line to pay this. I think what they may do is attempt to withdraw from this fund, which they can do under the '74 Act, but that would create the biggest legal fight. Perhaps I should point out that the collective bargaining agreement itself expires at the end of next year.

A union is not in the business of saying, well let us cut our people's benefits. And, of course, the industry would tell me they are not in the business of going out of business. So, I think it is setting the stage here for a horrendous conflict between the Union and the BCOA that we didn't create. Now we find lots of things to fight about, we are pretty good at that, but we didn't ask for this one to fight over.

So, we will have to establish a plan, the BCOA and the Union are required to do this under this Act, and I guess someone in the government either at the IRS or the Department of Labor, it is a little bit unclear to me who makes these decisions at what level, would either approve or disapprove this plan. But I think actually the actuaries that you have working for the '74 Plan are supposed to approve or disapprove this funding mechanism to get the plan back under a what they would call I guess solvency as we move forward. But it seems to me like we will be given an almost impossible task here.

The CHAIRMAN. Let me ask you, worst case scenario and the '74 Plan is completely insolvent and the PBGC takes over.

Mr. ROBERTS. That would be——

The CHAIRMAN. What can the retirees expect?

Mr. ROBERTS. Well, here is what happens, that is even over and above the Pension Protection Act. The Pension Protection Act was designed I think, I think Congress had good intentions there and I respect that. But I think the Pension Protection Act was geared so no one ever goes into the PBGC quite frankly. But I think they may have also inadvertently created a situation where PBGC will end up taking over some of these plans. If PBGC takes over, we all understand that they say they guarantee pensions, but they only guarantee them at a certain level. We have done somewhat of an analysis here, and I think people would in some instances be getting about half of what they are getting now if the PBGC stepped in.

Now this is a failure of the Pension Protection Act to do what it is supposed to do, this would be a failure of the Union and the Coal Operators from being able to figure this out in negotiations, the PBGC is now stepping in to say, we are going to take over. At that point in time people do not get the benefit level that they were entitled to. So, people that you referred to as not having a gold-plated pension would be getting less than they are now if we ever got to that stage. But I am committed, and I have told our members this, I am committed to keep that from happening.

The CHAIRMAN. Thank you.

Mr. YOUNG. Let me follow up with that, Mr. Chairman. Also we have also made kind of a quick look at how the beneficiaries could be affected if the PBGC were to, forced to take over here and our funding base fails for whatever reason. Unbelievable to me that someone who is receiving, you know, it is going to be an elderly lady probably, we are talking about widows here again who is receiving a check for $304 a month, we think that individual would see about a 10 percent cut in that check, if you can believe that, down to about $270. And it just progressively increases. So, you know, the more money you are entitled to in your package the more the PBGC makes a cut. So, our estimate would be, everyone would receive at a minimum of 10 percent cut, some could see as high as a 40 percent cut in their retirement.

The CHAIRMAN. Thank you, gentlemen, thank you both for your testimony today, we appreciate it.

The Committee will now hear from Mr. Alfred Whitehouse, the Chief of the Division of Reclamation Support, Office of Surface Mining Reclamation Enforcement. Nice to have you, Mr. Whitehouse, before the Committee, good to see you again. And we do have your prepared testimony and it will be made part of the record as if actually read. You may proceed as you wish.

STATEMENT OF ALFRED WHITEHOUSE, CHIEF OF THE DIVISION OF RECLAMATION SUPPORT, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mr. WHITEHOUSE. Mr. Chairman and Members of the Committee, thank you very much for the opportunity to testify on behalf of the Office of Surface Mining Reclamation and Enforcement on H.R. 5479, The Coal Accountability and Retired Employee Act of 2010. H.R. 5479 would require that the unused portion of the U.S. Treasury funds below the annual cap of $490 million established by the 2006 amendments to the Surface Mining Control and Reclamation Act be paid each year to the trustees of the 1974 United Mine Workers of America Pension Plan. While we recognize the importance of ensuring that retired miners receive their pensions, we have serious concerns with this bill. SMCRA established OSM for two basic purposes. First, to ensure that the nation's coal mines operate in a manner that protects citizens and the environment during mining operations and restores the land to beneficial use after mining. Second, to implement an abandoned mine land program to address the hazards and environmental damage created by centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

The AML program is funded by a fee assessed on each ton of coal produced and deposited in the Abandoned Mine Land Reclamation Fund. Historically, Congress appropriated far less money from the Abandoned Mine Land Fund than the total fees collected, which allowed the fund to grow. Beginning in Fiscal Year 1996, an amount equal to the interest earned by the AML Fund but capped at $70 million has been available for transfer to the United Mine Workers of America Combined Benefit Fund. This was to defray the cost of providing health care to certain retired coal miners and their dependents.

Congress amended SMCRA as part of the Tax Relief and Health Care Act of 2006. The amendments removed the $70 million cap and added funding for two additional UMWA health care plans. After 2006 amendments, OSM became responsible for transferring an annual amount to the three UMWA health care plans based on estimated expenses. Any shortfall between the interest earned by OSM and the amount of the transfer estimated by health care plan trustees would be funded from the U.S. Treasury's general fund.

Under Title IV of SMCRA, OSM expended $336 million from the general Treasury fund in Fiscal Year 2010. Approximately $227 million was distributed through AML grants to states and tribes, and approximately $108 million was transferred to the three health care plans. H.R. 5479 would require an amount representing the difference between the SMCRA transfer from the Treasury general fund and the $490 million cap to be transferred to the 1974 Pension Plan every fiscal year.

As a result, this bill would significantly increase expenditures from the Treasury under SMCRA and would eliminate all of the savings to be achieved through reductions proposed in the President's Fiscal Year 2011 budget. For example, the President's Fiscal Year 2011 budget proposes to eliminate Abandoned Mine Land payments to states and tribes that have been certified as completing reclamation of their high priority abandoned mine land coal problems. Under the budget proposal, the eliminated payments would remain in the Treasury.

However, H.R. 5479 would require that the full amount of the cap on the SMCRA Treasury allocations be spent every year, eliminating any savings. The Administration takes seriously the financial problems facing many multi-employer pension plans, including those sponsored by the United Mine Workers of America, and is committed to working with Congress to find solutions that address the long term solvency of these plans and protect the retirement security of workers and their beneficiaries.

However, we have serious concerns that H.R. 5479 if enacted would add significant new costs and eliminate any savings sought by the Administration's 2011 budget. Thank you very much for the opportunity to appear before the Committee today and testify on the bill. I look forward to working with the Committee to ensure the nation's abandoned mine lands are reclaimed.

[The prepared statement of Mr. Whitehouse follows:]

Statement of Alfred Whitehouse, Chief of the Division of Reclamation Support, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior

Mister Chairman and Members of the Committee, thank you for the opportunity to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding H.R. 5479, the Coal Accountability and Retired Employee Act of 2010.

H.R. 5479 would require that the unused portion of U.S. Treasury funds below the annual cap of $490 million established by the 2006 Amendments to the Surface Mining Control and Reclamation Act (SMCRA) be paid each year to trustees of the 1974 United Mine Workers of America (UMWA) Pension Plan. While we recognize the importance of ensuring that retired miners receive their pensions, we have serious concerns with this bill. We believe the AML program should remain focused on reclaiming high priority abandoned coal mine sites, and further, this bill is inconsistent with the President's Budget and goals of ensuring greater fiscal responsibility during today's challenging economic times.

Background

SMCRA established OSM for two basic purposes. First, to ensure that the Nation's coal mines operate in a manner that protects citizens and the environment during mining operations and to restore the land to beneficial use following mining. Second, to implement an AML program to address the hazards and environmental degradation created by centuries of weakly regulated coal mining that occurred before SMCRA's enactment.

Title IV of SMCRA created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Abandoned Mine Reclamation Fund (the Fund). OSM, either directly or through grants to states and tribes with approved AML reclamation plans under SMCRA, has been using the Fund primarily to reclaim lands and waters adversely impacted by coal mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Eligible lands and waters were those that were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under state or other Federal laws.

Historically, Congress appropriated far less money from the Fund than the total fees collected and deposited into the Fund on an annual basis. This allowed the Fund to grow considerably in years past. Beginning in Fiscal Year 1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the United Mine Workers of America Combined Benefit Fund (CBF) to defray the cost of providing health care benefits for certain retired coal miners and their dependents. Prior to 2006, OSM's annual payments to the CBF were limited to the lesser of the interest earned on the AML fund, or $70 million.

In 2006, Congress amended SMCRA as part of the Tax Relief and Health Care Act of 2006, (2006 Amendments). The amendments removed the $70 million cap, and added funding for two additional UMWA health care plans. With the 2006 Amendments, OSM became responsible for transferring an annual amount based on the estimated expenses of three UMWA Health Care Plans. Any shortfall between the amount of interest earned by OSM, and the amount of the transfer estimated by health care plan trustees would be funded from the U.S. Treasury's General Fund.

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As noted earlier, the 2006 amendments capped SMCRA expenditures from the Treasury General Fund at $490 million per year. In the current fiscal year, approximately $227 million of the Treasury General Fund was distributed through mandatory AML grants to states and tribes and approximately $108 million was transferred to the three heath care plans. Thus, OSM expended $336 million from the Treasury General Fund in fiscal year 2010.

H.R. 5479 would require an amount representing the difference between the SMCRA transfer from the Treasury General Fund and the $490 million cap to be transferred every fiscal year to the 1974 UMWA Pension Plan. As a result, this bill would significantly increase expenditures from the Treasury under SMCRA.

This bill would also most likely eliminate all of the savings to be achieved through reductions proposed in the President's Fiscal Year 2011 budget. For example, the President's FY 2011 Budget proposes to eliminate AML payments to states and tribes that have been certified as completing reclamation of their high priority AML coal problems. Under the proposal, the eliminated payments would remain in the treasury; however, this bill would require that the full amount of the cap on SMCRA Treasury allocations be spent every year, eliminating any savings.

The Administration takes seriously the financial problems facing many multiemployer pension plans, including those sponsored by the UMWA, and understands the valuable benefits that these plans provide to millions of workers and retirees. When people retire, they deserve to know that they will receive the benefits they were promised. The Administration is committed to working with the Congress to find solutions that address the long-term solvency of these plans and protects the retirement security of workers and retirees. However, we have serious concerns that H.R. 5479, if enacted, would add significant new costs, and eliminate savings sought by the Administration's FY 2011 budget

Thank you for the opportunity to appear before the Committee today and testify on this bill. I look forward to working with the Committee to ensure that the Nation's abandoned coal mine lands are adequately reclaimed.

The CHAIRMAN. Thank you, Mr. Whitehouse. I realize fully, and we have seen this many times in this city, that you are I guess what we could call the proverbial sacrificial lamb at this hearing, and you have been directed by OMB what to say about the pending measure, and I am sure you would like to use this money to make the deficit look smaller, that is commonplace. But I would point out two things with respect to your testimony. First, as I am sure you are aware, there would be no AML Program today if it were not for this gentleman sitting in this chair.

I almost singlehandedly, against utility and coal industry opposition, extended the program in the late '80s, and then again in '92, and played a major role in the '06 extension. I say this because I know there are people within your agency who simply do not like to be put in the position of managing funds for the purpose of mine workers' health care plans, pure and simple. And I believe that sentiment is coming out today with respect to the pending legislation.

And second, as you heard me questioning President Cecil Roberts, if the '74 plan goes under, then the PBGC takes over, and guess who foots the bill? The taxpayers, the American taxpayers, and that is a fact. So, I am not going to grill you this morning or ask you any questions on your heartless testimony, but I realize the position you have been put in and I guess I will let it go at that. You will too, huh?

Mr. WHITEHOUSE. Thank you very much.

The CHAIRMAN. OK——

Ms. CHRISTENSEN. That is fine with me too.

The CHAIRMAN. That is fine with the gentlelady from the Virgin Islands? Thank you.

Mr. WHITEHOUSE. Thank you.

The CHAIRMAN. If there is no further business, the Committee stands adjourned.

[Whereupon, at 10:57 a.m., the Committee was adjourned.]

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