

REPORT FOR THE SECRETARY ON THE PROPOSED BLM/OSM CONSOLIDATION

February 15, 2012

I. INTRODUCTION

Secretary of the Interior Ken Salazar instructed senior leadership of the Department of the Interior to explore whether certain functions performed by the Office of Surface Mining Reclamation and Enforcement (OSM), the Bureau of Land Management (BLM), and the Office of Natural Resources Revenue (ONRR) might, without compromising the Department's legal responsibilities, be consolidated to increase efficiencies and improve the delivery of services.

The Secretary issued this instruction through two Secretarial Orders. The first Secretarial Order, S.O. 3315, was issued on October 26, 2011, and identified four specific areas of potential consolidation: (1) administrative support functions; (2) environmental restoration of abandoned mine lands; (3) fee collections; and (4) regulation, inspection, enforcement, and state program oversight.

The second Secretarial Order, S.O. 3316, called on the Deputy Secretary, the Assistant Secretary – Land and Minerals Management, the Director of the Office of Surface Mining, and the Director of the Bureau of Land Management to complete consultations with a wide variety of interested parties regarding the proposed administrative consolidation of certain OSM, BLM, and ONRR functions, and to produce this report to the Secretary with the senior team's recommendations.

II. BACKGROUND

The Secretary has asked his senior team to explore the potential consolidation of certain functions that are currently managed separately by OSM, BLM and ONRR as part of the Department's on-going commitment to identify how it can most efficiently and cost-effectively deliver services to the American people.

This review was prompted by a preliminary internal analysis which noted that OSM has continued to devote a significant portion of its budget to maintaining its own administrative support functions, rather than sharing administrative services as other Departmental bureaus have done, and which suggested that the consolidation of certain administrative functions potentially could free up a larger percentage of OSM's limited budget to be used for mission-critical activities. It also appeared that efficiencies might be gained by aligning the abandoned mine cleanup programs operated separately by OSM and BLM; by transferring certain of OSM's ministerial fee collection and distribution responsibilities to the newly-created ONRR, which now has the consolidated responsibility to oversee the fee and royalty collection and auditing programs for the large majority of the Department's natural resource programs; and by potentially consolidating portions of the BLM's coal-related inspection and enforcement activities into OSM's coal-related inspection and enforcement program.

Throughout this evaluation, the Secretary has emphasized his goal to explore these and other potential realignments in order to *improve* OSM’s capacity to fulfill its core regulatory responsibilities in overseeing surface coal mining operations in the United States, and not to diminish that capacity in any way.

The Secretary directed his senior team to ensure that any realignment or consolidation of functions among OSM, BLM, and ONRR would fully comport with statutory requirements. Accordingly, an underlying premise of the evaluation has always been that OSM’s core regulatory functions would remain independent, in accordance with the Surface Mining Control and Reclamation Act’s (SMCRA) mandate that surface coal mining regulation be administered by an independent agency with neither a resource development or resource preservation mission,¹ and led by a Presidentially-appointed, Senate-confirmed Director.²

While SMCRA requires that OSM have regulatory independence, it also anticipates the possibility of sharing some functions with other bureaus. More specifically, SMCRA specifies that OSM “may use, on a reimbursable basis when appropriate, employees of the Department and other Federal agencies to administer the provisions of this Act.”³ The SMCRA provides flexibility in allowing OSM to assume additional functions that otherwise might be performed by other bureaus in the Department, provided that those functions “relat[e] to the functions of the Office,” are consistent with SMCRA,⁴ and do not have as their purpose “promoting the development or use of coal or other mineral resources or regulating the health and safety of miners under provisions of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742).”⁵

The recommendations included in this report have been informed by a variety of sources, including extensive internal input that was gathered by four employee-led interagency teams from OSM, BLM and ONRR. In addition, public meetings were held in several locations across the country to engage tribes, state regulatory officials, industry, interested parties, the environmental advocacy community, and representatives of communities affected by coal mining, as well as agency employees. Stakeholder concerns centered around three specific areas: compliance with SMCRA; maintaining OSM’s independent regulatory oversight role and mission focus; and the efficiencies to be gained as a result of an organizational realignment. The bureaus and senior leadership also consulted with the Office of Management and Budget and with congressional staff, including House and Senate authorizing committees.

The four officials charged by the Secretary with preparing this report – the Deputy Secretary, the Assistant Secretary – Land and Minerals Management, the Director of OSM, and the Director of the BLM – are making the recommendations set forth in this report. The senior team's

¹ S. Rep. No. 95-218 on S.7 at 63 (May 10, 1977).

² 30 U.S.C. §§ 1211(a), (b), and (c).

³ 30 U.S.C. § 1211(b).

⁴ 30 U.S.C. § 1211(b) and (c)(13).

⁵ *Id.* at §1211(b).

recommendations have been informed by the painstaking work of the internal teams and thoughtful input from a variety of outside sources.

III. RECOMMENDATIONS

The Department's senior leadership recommends that the Secretary implement the following consolidations and alignments of functions now administered by OSM, BLM, and/or ONRR:

A. OSM as an Independent Bureau

The Secretary has made clear that any approach to OSM/BLM consolidation must fully comport with all legal requirements. Consistent with these instructions, this report recommends that OSM continue to operate as an independent bureau within the Department, while pursuing the administrative efficiencies and program consolidations outlined below. Under this approach, the Director of OSM will continue to report to the Secretary, through the Assistant Secretary – Land and Minerals Management. There will be no mixing of OSM's coal-related regulatory responsibilities with BLM's coal-leasing responsibilities.

B. Administrative Support Functions

It is neither necessary nor cost-effective for OSM, as one of the smallest bureaus in the Department of the Interior, to replicate certain administrative support services that other bureaus can more efficiently provide to OSM. By way of example, in connection with the recent reorganization of the former Minerals Management Service, certain administration services such as safety, training and equal employment opportunity programs, and space and facilities management, are being provided by the larger Bureau of Ocean Energy Management (BOEM) for its enforcement-related counterpart, the Bureau of Safety and Environmental Enforcement (BSEE).

The BLM is well situated to efficiently provide certain types of administrative services to OSM, thereby freeing up OSM management time from continuing to offer these services on a stand-alone basis. Internal stakeholders supported the consolidation of redundant administrative functions, and external stakeholders rarely addressed these functions.

This report recommends that the following services currently provided by OSM should instead be provided by BLM which, as a much larger organization can provide these services more cost-effectively than OSM:

- (1) National Fleet/Property Management:** The national component of fleet and property management is well suited for integration with the BLM. [Note: Several functions, including auditing, inventory control, and expenditure verification, require fleet or property managers to be located at or near the offices they support, so that they may effectively manage day-to-day operations. In those instances in which the bureaus are co-located, integrating these local fleet and property management functions may also be appropriate.]
- (2) Equal Employment Opportunity (EEO):** The operating procedures for EEO functions are similar throughout all bureaus. Other DOI offices are effectively handling the full range of

EEO functions across agencies. Accordingly, this function is well suited for integration into the BLM.

- (3) **Ethics:** The team recommends that OSM’s ethics program be integrated into the BLM. [Note: For this recommendation to be carried out, Secretarial Order 3288, which currently requires all DOI bureaus to house a designated ethics official, would have to be modified.]
- (4) **Safety and Occupational Health:** Safety and occupational health functions, designed to prevent loss of life and harm to people and minimize damage to property, operations, or the environment, may be integrated within the BLM.
- (5) **Non-Technical Employee Training:** Non-SMCRA training, such as management and leadership training, is suitable for integration with the BLM. Other DOI offices are effectively handling training functions across agencies in these areas.
- (6) **Space Allocation Management:** OSM’s space allocation functions are suitable for integration with the BLM.

In addition, reimbursable agreements for Department-level services should be considered for the following administrative functions:

- (1) **HR Operations:** HR services, such as centralized position classification, security operations, background adjudication, and HR systems (*e.g.*, Federal Personnel Payroll System, QuickTime, and Hiring Manager), are used DOI-wide and could easily be offered to OSM by a central provider, such as DOI’s National Business Center (NBC), as is done for ONRR.
- (2) **Acquisition and Procurement:** DOI’s NBC is centralizing the Department’s acquisition and procurement functions, including procurement policy and oversight, and integrated charge card management. These functions are DOI-wide and could easily be provided to OSM by NBC.
- (3) **Information Technology:** In accordance with the current DOI IT Transformation Plan and S.O. 3309 (“Information Technology Management Functions and Establishment of Funding Authorities”), capital planning and investment, infrastructure management, information assurance, and records management can be transferred or merged out of OSM.
- (4) **Space Co-Location:** The “Service First” space co-location model could be used to increase operational efficiencies at a number of locations, including the following: Washington, DC area (Main Interior Building, South Interior Building, M Street, and Springfield, VA); Denver, CO area (Denver Federal Center, Lakewood, and Denver); Albuquerque, NM; Casper, WY; Farmington, NM; and Tulsa, OK.

For the following administrative services, OSM should have dedicated staff to ensure that the OSM Director can discharge his or her responsibilities effectively. To meet that need, the senior leadership recommends that the following three functions remain separate:

- (1) **Communications:** Public affairs, legislative affairs, correspondence, website, social media, and compliance with the Freedom of Information Act demand a coordinated effort on the part of staff and senior management that necessitates close proximity and immediate availability to each Director. The communications and legislative affairs staff, in order to be effective and responsive, must have intimate and detailed knowledge of their bureau's operational and policy issues, governing and organic statutes, and the policy priorities of senior leaders.
- (2) **Budget:** Certain budget functions should remain separate, including: the formulation of an annual budget request; aspects of budget execution and funds control; and time-sensitive, mission-critical responses frequently requested by OMB, Congress, and DOI that require immediate proximity to and responsiveness from Directors' offices and program leads. With a consolidated audit and shared business and accounting systems, certain budget execution and financial functions, such as processing travel and charge-card purchases, may be effectively performed as shared services or by a central provider such as NBC.
- (3) **Emergency Management (Continuity of Operations):** Emergency management programs – prevention, planning, preparedness, response, and recovery – are unique to each bureau. The requirements in this functional area necessitate immediate, direct access to the Director and employees of each agency to determine how critical operations will be handled in the event of an emergency and should remain separate. It is also important for each bureau to continue to have onsite Continuity of Operations representatives.

C. Collection and Distribution of Fees

As noted above, ONRR is responsible for collecting the large majority of royalties and fees related to the use of natural resources, including coal leasing fees, and oil-and-gas and renewable-energy production royalties and fees (for both onshore and offshore activities, as authorized by BLM and BOEM, respectively). Last year, the royalties, fees, and other revenues collected by ONRR amounted to more than \$11 billion dollars.

The OSM currently collects approximately \$258 million in annual fees from coal companies to administer the abandoned coal mine reclamation program under the authority of SMCRA.⁶ The collection of these fees, as well as the verification of the Abandoned Mine Lands (AML) fee payments have ministerial components that, under SMCRA, can be performed by another bureau.⁷

The OSM has performed its fee collection and distribution function effectively. The ONRR, however, is a larger bureau whose sole mission is to accurately and effectively collect royalties and fees associated with natural resources. In order to take full advantage of the efficiencies associated with the scale-up of these functions within ONRR, this report recommends that OSM's ministerial fee collection, distribution, and audit functions be transferred to ONRR. Transferred functions should include, but not be limited to, quarterly coal reclamation fee reporting, payment processing,

⁶ 30 U.S.C. §§ 1231, 1232(a).

⁷ See 30 U.S.C. § 1211(b).

billing, amendment processing, audit processing, refund processing, civil penalty processing, termination of currently not collectible debts, financial control, debt reporting, pre-audit research, on-site audit and examination of company records, internal control evaluation, SMCRA 402(c) verification, Applicant Violator System Verification, net worth determinations, and investigations. These functions, while ministerial in nature, represent a significant portion of OSM's current workload and are well suited to the core mission of ONRR.

It should be noted that while it is recommended that OSM's ministerial fee collection, distribution, and audit functions be transferred to ONRR, OSM must maintain responsibility for AML fund management and verification that funds distributed through the AML program are expended properly under SMCRA. Accordingly, decisions affecting the AML program, including fee policy, development of annual audit plans, enforcement actions and decisions, grant making, and post-distribution verification of state and tribal grant expenditures must remain in OSM.

D. Environmental Restoration of Abandoned Mine Lands

Both the BLM and OSM have the responsibility to restore abandoned mine lands. The OSM administers a much more robust abandoned mine lands cleanup program than the BLM because the OSM program is supported by fees that are assessed on current coal mining operators. In some cases, OSM abandoned coal mine cleanup dollars can be spent on reclaiming abandoned hard rock mines, in addition to abandoned coal mines.

The BLM, on the other hand, does not have the authority to charge a fee on hardrock mining operators to cover abandoned mine cleanups because the governing law – the Mining Law of 1872 – does not give the BLM the authority to collect such fees. As a result, the BLM's abandoned mine cleanup program is more limited in scope than OSM's, despite the well-documented public health and environmental dangers associated with the tens of thousands of abandoned mines on BLM lands. The BLM's AML program addresses public safety and environmental hazards found on BLM lands, relying on delegated authority under the Federal Land Policy and Management Act of 1976 (FLPMA). It also focuses on cleaning up releases of hazardous substances at AML sites, relying on delegated authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Some stakeholders expressed concern that funding for OSM's AML Program might be reduced or slowly shifted towards hardrock mining and away from coal. This concern is somewhat understandable given the fact that the BLM lacks authority to charge a fee on hardrock mining. In recognition of this limitation, the Administration has recommended reform of the Mining Law of 1872 so that companies that extract minerals from our public lands pay appropriate royalties to the American taxpayers who own our public lands. It also would seem appropriate for hard rock mining operators to pay the same type of fee that is collected from coal mining operations, so that BLM can pursue a more vigorous abandoned mine cleanup program.

In the absence of BLM's ability to operate a more robust abandoned mine cleanup program, the question arises whether some alignment of OSM's and BLM's abandoned mine cleanup programs might nevertheless produce some efficiencies.

Regretfully, consolidation opportunities between OSM and the BLM's AML programs are constrained by a number of factors. First, OSM and the states and tribes are prohibited from spending SMCRA AML fund monies on reclamation of sites that are listed under CERCLA. Second, to the extent that the BLM undertakes mine cleanups under the authority of CERCLA (whether they are CERCLA-listed sites or not), the BLM relies on CERCLA expertise that it has developed in a number of contexts – expertise that OSM does not share. Third, while it may be desirable to use OSM's state grants-in-aid program to more systematically accomplish AML reclamation on BLM and other bureaus' lands, it does not appear possible to do so, given that SMCRA assigns to OSM and its Director the duty of awarding of AML grants to the states.⁸

For all of these reasons, the opportunities to consolidate the BLM's and OSM's abandoned mine cleanup programs are less robust than they may first appear. Nonetheless, this report recommends some increased efficiencies that can be obtained in this arena, including the following:

- Among all of the Department's bureaus, OSM has the greatest skill, expertise, and experience efficiently addressing physical safety hazards associated with abandoned coal mines. As a result, we recommend that OSM serve as DOI's primary provider of AML physical hazards remediation design and project management. OSM potentially could efficiently and effectively provide this service to all DOI bureaus, including the National Park Service (NPS) and the U.S. Fish and Wildlife Service (FWS), as well as BLM.
- Given the robustness of OSM's abandoned coal mine cleanup program, OSM should develop new avenues of cross-bureau technical assistance, training, and technology transfer to address AML issues encountered by all bureaus.
- Inventories of abandoned mine lands on various public lands have not been consolidated into a single national database, leading to difficulty in evaluating the size of the overall need presented by abandoned mine lands, and in allocating resources where they are needed most. Given its AML expertise and access to funding, OSM is well-positioned to develop a secure portal that would provide access to the AML inventories of OSM, BLM, FWS, and NPS. This report recommends that existing databases be evaluated with an eye toward such a potential consolidation, perhaps in connection with the Department's on-going IT Transformation project.

⁸ 30 U.S.C. § 1211(c)(1) and (4).

E. Regulation, Inspection, and Enforcement, and State Program Oversight

The OSM has regulatory responsibilities over the conduct of surface coal mining and reclamation operations, under the authority of SMCRA. Many of those responsibilities have been assumed by states that have attained “primacy” (by obtaining OSM approval of their regulatory programs) to regulate surface coal mining and reclamation operations within their borders. In these states, OSM retains oversight and enforcement authority to ensure that the states are properly administering and enforcing their OSM-approved regulatory programs. Of the coal-producing states, only Tennessee and Washington have a Federal program administered by OSM. As a result, OSM has limited front-line inspection and enforcement resources. The OSM nonetheless has an obligation to provide meaningful oversight of state programs. In enacting SMCRA, Congress took OSM’s enforcement obligations seriously; SMCRA expressly prohibits OSM from assuming any responsibility that is related to promoting coal development.

The BLM also has certain inspection and enforcement obligations with respect to coal mining activities. With the exception of its regulatory oversight of Federal coal exploration, however, the focus of the BLM’s coal inspection and enforcement program is to ensure maximum economic recovery, diligent development of the resources, and coal lease compliance.

The OSM could not take on the coal production-related aspects of the BLM’s enforcement responsibilities without potentially running afoul of SMCRA, a concern expressed by stakeholders. The OSM potentially could, however, provide other enforcement-related services for the BLM. Doing so would help address concerns about the ability of the BLM to both engage in leasing of the public lands for a variety of purposes, and to engage in enforcement activities associated with the leasing activity.

This report recommends that OSM and BLM engage in a longer-term evaluation of whether certain of the BLM’s non-coal mining law enforcement responsibilities might be transferred to OSM, so as to avoid either a real or perceived conflict of interest between leasing activity and enforcement. A longer-term evaluation is needed because the overlap between OSM and BLM’s enforcement resources and expertise does not currently provide a compelling case for a more immediate transfer of enforcement-related responsibilities.

By way of example, the OSM Western Region has five offices, together located in just 4 of the 11 BLM western states. In FY 2011, 66 percent of the BLM’s mining law inspection activity occurred in five of those states, where OSM currently has no presence. As a result, transfer of the BLM’s inspection and enforcement responsibilities to OSM would likely involve co-locating OSM employees in numerous BLM offices.

Also, the BLM mineral specialists that currently perform inspections provide many services to the BLM beyond inspection and enforcement. They play crucial roles in the development of the Bureau’s National Environmental Policy Act documents and Resource Management Plans, for instance. In FY 2011, 412 employees, representing over a dozen different disciplines, conducted some aspect of the BLM’s inspection and enforcement function. Transferring these employees to OSM would not be a simple matter. Further, an estimated 75 full time employees would be required to maintain the same level of inspection and enforcement performance within the OSM.

In addition, BLM's inspection personnel perform inspections at operations covering some 50 different hard rock commodities. Mineral-specific and legal training would be necessary for OSM inspectors, assuming BLM personnel were not transferred to OSM. Regulatory changes also might be required in order for OSM to assume these responsibilities, insofar as the BLM's regulations expressly identify the BLM as the agency responsible for completing inspection and enforcement program actions involving mining law operations.

IV. CONCLUSION

Significant efficiencies can be gained by consolidating certain functions currently performed, often in parallel, by OSM, BLM, and ONRR. Pursuing the recommendations included in this report will not compromise in any way the statutory responsibilities of OSM, BLM, or ONRR. To the contrary, they hold the promise of strengthening the capabilities of each of the affected organizations.

If the Secretary adopts the recommendations set forth in this report, it would be appropriate to replace Secretarial Orders 3315 and 3316 with a new Secretarial Order that instructs the Directors of OSM, BLM, and ONRR to develop requisite plans to implement the recommendations. We recommend that implementation proceed on a schedule that the Directors agree to, taking into account the importance of moving forward on an expedited basis to institute reforms that strengthen the Bureaus' capacities to fulfill their legal obligations while more efficiently and effectively delivering important governmental services.