Financial Assurance and Bonding

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Notable Items

- Within the past 12 months all energy sectors have experienced bankruptcies and balance sheet write-downs

- The banking industry is setting aside additional capital to compensate for extensive energy sector losses in 2016. This is having adverse impacts to the banking and surety marketplace

  Capital markets are tightening for energy market participants

- Wyoming reclamation is the industry standard (January 2015 coal acres example):
  - Total coal disturbed area169,639 acres
  - Acres in active mining: 90,214 (53% of disturbed acres)
  - Acres reclaimed through final seeding 79,425 (47% of disturbed acres)
  - Acres in agricultural production 38,000 (22% of disturbed acres)

- Historical considerations with SMCRA:
  - Self bonding rules and regulations developed by OSMRE (federal secretarial order)
  - Wyoming's self bond rules were approved by OSMRE in 1980
  - Concerns over surety and capital markets were motivations for the development of self bonding provisions

Reclamation Liabilities and Risk

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

- **Considerations:**
  - Accurate calculation of the reclamation liability (risk evaluation Guideline 12 input cost revisions)
  - Annual evaluation of market pricing for input costs (e.g. fuel, equipment, and labor)
  - Useful life equipment evaluations (based on the best available equipment information and best management practices of these assets)
  - Accurate equipment performance and blasting costs based on the best information available (third party data, Info Mine, Equipment Watch, Cat handbook, and specific Wyoming based Modular/production data information)
  - Close evaluation of post mining topographic and engineering design (PMT operator driven)

Financial Assurance Instruments

- **Cash**
  - Liquid

- **Letters of Credit, CD, Bank Guarantees:** Multiple banking institutions "pooling" are often securing multiple levels of debt for a single corporate entity – off balance sheet debt concerns. Many require that LOC be secured.
  - Requires management in the event of bankruptcy to establish priority as a senior debt or credit holder to bankruptcy court

- **Surety:** Consideration to exposure in mining nation wide/globally, energy sectors nation wide, and <u>foreign ownership</u>

- **Self Bonding:** Corporate pledge based on balance sheet net worth, requires management in the event of bankruptcy

- **Unsecured or Secured**: mitigate risk through collateralization (priority lien), increase call rights and increase liquidity of instrument

- **Assigned Trust:** *<u>(new concept)</u>*

Moving Forward, Matching Risk to Financial Instruments

- **Standards for healthy guarantor/institution** Similar to self bond evaluation (guarantor solvency metrics; move toward secured creditor position)

- **All financial instruments have a level of risk**
  - Self-bond secured – right to negotiate reclamation financial assurance instruments specific to permitted mine and reclamation plans (guaranteed seat at the table)
  - Sureties, CDs, bonds etc. – enhance review of guarantor

- **Diversifying Risk**
  - Other than cash no one instrument utilized 100%
  - Riders provide opportunity to diversify instruments over time

Conclusion

- **All financial assurance instruments are needed to diversify risk**
  - Self Bonding, Surety Bonding, Letters of Credit, Cash, Assigned Trusts

- **Risk based assessments should be used for definition of**:
  - Actual liability (Accurate calculation of reclamation bond (mine specific))
  - Reviewing risk: aligning life stage of mine and benchmark requirements of liquidity for financial instrument(s)
  - Application of the appropriate financial instrument or instruments (mix) for defined risk
  - Diversification of financial assurance instruments to lower risk to the state

- **Call on Financial Assurance**:
  - Review: Solvency of Guarantor – establishing set solvency requirements for all guarantors: Surety, Financial Institutions, Self-bonding