

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
ANNUAL EVALUATION REPORT**

on the

**HOPI ABANDONED MINE LAND
RECLAMATION PROGRAM**

Evaluation Year – 2006
(July 1, 2005 through June 30, 2006)

Autor: Vernon Maldonado



INTRODUCTION

This annual evaluation report is produced by the Office of Surface Mining (OSM) in fulfillment of its statutory responsibility under the Surface Mining Control and Reclamation Act of 1977, (SMCRA). The purpose of this report is to annually assess the effectiveness and report on the accomplishments of the Hopi Abandoned Mine Lands Reclamation Program (Hopi AML Program). The annual report consists of OSM's oversight findings based on field inspections, data provided by the Hopi, and meetings with the Hopi AML Program during the 12-month evaluation period beginning July 1, 2005 and ending June 30, 2006.

The OSM has responsibility under SMCRA for approving State and Tribal Abandoned Mine Land Programs, to carry out the goals of Title IV of SMCRA. The primary goal of Abandoned Mine Land Programs is to mitigate the effects of past coal mining, by reclaiming abandoned mines. The primary emphasis is placed on correcting the most serious problems endangering public health, safety, general welfare, and property. Once this is accomplished, secondary emphasis is placed on the remediation of mining related impacts to impacted communities. This remediation is accomplished through the funding of public facility or infrastructure projects.

On behalf of the Secretary of the Department of the Interior, OSM administers the Abandoned Mine Reclamation Fund by awarding grants to States and Tribes, to cover the administration and reclamation costs of running their Programs. The OSM Western Regional Center's (WRC) Albuquerque Field Office (AFO) provides assistance to the Program and, through oversight, annually monitors the Hopi AML Program's performance.

PART I GENERAL INFORMATION

Program History:

The Hopi inhabit twelve villages and one community on the Hopi Reservation. Under its 1936 Constitution and By-Laws, the Hopi Tribe consists of a Union of 12 self-governing Villages or Communities.

- June 28, 1988 - OSM approved the Hopi AML Program. Hopi AML did not apply for an Emergency AML Program, so OSM retains the responsibility for reclamation of "emergency" AML projects.
- June 9, 1994 - approximately six years after the Program was approved, the Secretary of the Interior concurred with the Hopi AML's certification that all known eligible priority-1 and priority-2 abandoned coal mines were reclaimed. A total of \$1,188,524 was spent by Hopi AML reclaiming abandoned coal mines on the Hopi Reservation.

Aside from its responsibility to "maintain" past mine reclamation work or to reclaim any newly identified abandoned coal mine hazards, the Program is no longer actively involved with mine hazard remediation work of either coal or non-coal mines. Having certified completion of all known coal reclamation, the Program is eligible to use AML funds to construct **Public Facility Projects (PFPs)** or **Community Impact Projects (CIPs)**. Since June 1994, the Program has almost exclusively focused its efforts on the construction of PFPs.

Program Staffing:

The Program currently consists of around five (5) employees, including the Office of Mining and Mineral Resources Director (40% funded by AML), Program Manager, Project Manager, an Administrative Secretary, and an Equipment Pool Coordinator. All but the Director position are 100% funded by Hopi AML. The Hopi AML office is located in a manufactured building located in Kykotsmovi, Arizona on the north side of Highway 264.

In the coming evaluation period, due to OSM's recommendation to decrease program administration costs, the Project Manger position will be funded at 50%. In addition, due to OSM's recommendation to clearly separate the accounting for the Hopi AML Program from the Hopi Rental Program, the Equipment Pool Coordinator salary will be 100% funded from the set-aside revenue generating revolving account (Hopi AML Rental Program).

Hopi Public Facility Program:

Sections 411(e) and (f) of SMCRA provide for infrastructure development projects as a means of offsetting both current and past mining related impact to Hopi communities. PFPs are considered priority-3 and 4 public facility projects. These projects are perceived by SMCRA as a means of offsetting/mitigating mining related impacts to Tribal populations by contributing to the development or expansion of local infrastructure and other public facilities. Both Hopi Villages and the Hopi government (for Tribal-wide PFPs) determine their own Project priorities.

Basic human needs for infrastructure and public facilities on the Hopi Reservation greatly exceed the funds available from AML and from other Tribal, State, and Federal sources. The AML Program has conducted substantial public outreach to explain what types of facilities are eligible for AML funding, has provided guidance and assistance to each village regarding the funding criteria for PFPs. Hopi AML initially has reserved or dedicated approximately \$200,000 for each village to have a Public Facility Project. Unfortunately, many Villages have not taken advantage of these funds. In EY-2006, Hopi AML notified those Villages that had not applied for these funds that the funds would be forfeited and redirected unless the Village submitted a construction ready and program eligible project by the deadline of May 31, 2006. This provision will allow the Hopi AML Program the ability to redirect badly needed funds to other fundable projects such as Tribal-wide projects.

Several of the Public Facility Projects completed to date were funded in partnership by Hopi AML and other Agencies. Other sources of funding include Village, Tribal, State, Private funds, or funding from other Federal agencies. [See Table-1 of this report for a listing of Public Facility Projects and their funding status.]

PFP Project Management Process:

Once a project is funded, the Hopi AML Program works with a project development task team. The team typically consists of Village administrators, contractors and tribal representatives from other Departments or Federal agencies such as Indian Health Service. Project development typically includes:

- 1) Obtaining environmental clearances and hiring contractors if necessary to perform biological or cultural & historic surveys and to write environmental documents;

- 2) Securing all necessary permits and to meet National Environmental Policy Act (NEPA) requirements;
- 3) Developing geo-technical surveys, to perform legal property assessments;
- 4) Performing hazardous property assessments; and,
- 5) Development of architectural / engineering specifications and contract specifications for the project.

Hopi AML then submits a project package proposal to OSM with the necessary NEPA compliance documents such as environmental assessments (EAs) or Categorical Exclusions (CXs) and the required environmental / cultural & historic clearances. OSM then typically issues a Finding of No Significant Impact (FONSI) and grants an Authorization to Proceed (ATP) with construction. Program Administration grants and Construction grants are issued separately to the Hopi AML Program. Administration grants are awarded on an annual basis and construction grants are authorized for up to three years.

Once ATP is received from OSM, the Hopi AML Program works with the Tribal government and Villages to initiate and monitor the project construction work and to account for project expenditures. In addition, the AML Program is responsible for keeping the Tribal government and village governing boards informed of project status and concerns. The Hopi AML Program bids out the contract, selects the lowest responsible bidder (contractor) through a competitive bidding process and monitors the construction activity for compliance with schedules, NEPA, etc.

The Hopi AML Program does not oversee compliance with building code or design specifications for structurally significant buildings. However, Hopi AML has developed the contracts that specify compliance with the Uniform Building Code.

[Status of Fee Collections and Fund Distributions:](#)

The Abandoned Mine Reclamation Fund consists of fees, contributions, late payment interest, penalties, administrative charges, and interest earned on investment of the fund's principal.

Historically, between \$1.0 and \$1.5 million in AML fees have been collected annually from active coal production on Hopi land. However, recently coal production on Hopi land has decreased which has caused AML fee collections to likewise decrease. Total State-share (Tribal) collections for the Hopi, from January 1978 through Fy-2005 (September 30, 2005), total \$29,542,875 in coal fees. State-share (50%) collections for this amount would therefore be \$14,771,437. However, State-share distributions during this same period have only totaled \$8,888,546 (62% of State-share collections). The difference, \$5,882,891, is the Hopi unappropriated State-share balance as of September 30, 2005. See the section below for the current Tribal-share balance.

Grants and Financial Information:

The following table shows grants that were active during the evaluation period:

Grant Number	Awarded	Closes	Admin.	Const.	Total
GR 307800	09/01/03	08/31/06	\$247,596.79 (\$36,982.21 deobligated)	\$200,000.00	\$484,579.00
GR 407800	09/01/04	Closed	\$313,162.00	\$ 0	\$313,162.00
GR 507800	09/01/05	08/31/08	\$290,415.00	\$51,860.00	\$342,275.00

In addition to the above grants, OSM has determined that as of April 12, 2006 the Hopi AML Program has \$1,568,208 available in its Tribal-share balance. This amount includes money from prior year carry over, money from prior year de-obligations and money for the EY-2006 distribution. This amount appears to be sufficient for the Hopi AML Program to fund a substantial project (two or three hundred thousand dollar) every year for six or seven years.

Program Maintenance (AML Plan):

There are no oversight issues with regard to Program maintenance (maintaining a current AML Plan / regulations) nor do any Program maintenance deficiencies currently exist with regard to the Hopi AML Plan. Timeliness of Program maintenance has never been an issue.

PART II. NOTEWORTHY ACCOMPLISHMENTS

Since the Hopi AML Program did not start nor complete any AML/PFP projects this year, OSM does not have any physical accomplishments to highlight for EY-2006.

With regard to AML reclamation, in EY-2005 Hopi AML inspected several of its past reclamation projects for site stability, erosion, etc., to determine if any maintenance work is needed. As a result of that survey, maintenance work was determined to be necessary at eight sites. Hopi AML was unable to submit a reclamation maintenance project proposal to OSM that would include NEPA compliance and a scope of work for the maintenance, prior to June 30, 2006. OSM-AFO anticipates that such a project proposal package will be submitted to OSM sometime in EY-2007.

With regard to PFP's, Hopi AML has not initiated any new projects since the Conference and Wellness Center project was completed in early 2004. The Hopi AML Program did not have any Public Facility Projects in construction during EY-2005 and 2006. However, the Hopi AML Program has been working for over two years on project development for potential projects with three Villages: Mishongnovi (development of a water well in cooperation with HIS), Tewa (purchase and installation of a modular administrative office building), and Walpi (bath house & office addition). In addition, Hopi AML has been working with the Villages of Sichomovi and Lower Moencopi, to secure eligible (fundable) project

proposals with signed resolutions from them.

To date, no project packages (with costs, scope of work and NEPA compliance documents – requesting a FONSI and ATP) have been sent to OSM requesting funding for any of these five potential projects. OSM understands that the Hopi AML Program is currently evaluating the funding eligibility of several potential project proposals that were submitted by the Village of Lower Moenkopi. Please see Part III, Results of Enhancement and Performance Reviews for more information.

PART III. RESULTS OF ENHANCEMENT AND PERFORMANCE REVIEWS

The Hopi AML Program originally reserved \$200,000 in AML funding for each Village to construct a PFP. After successfully completing about six (6) PFP's the Hopi AML Program began to have increasing difficulty in getting the remaining Villages to propose projects and adopt Village resolutions for PFPs. Village priorities are determined by individual Villages and the Hopi AML Program has little influence over Village project selection. The role of the Hopi AML Program is one of providing guidance to the Villages to direct them on what types of potential projects are authorized for funding under the Hopi AML Program and the Title IV of SMCRA.

When Hopi AML first started funding PFPs in 1994 several Villages proposed projects for funding and the projects were ultimately constructed. The remaining Villages have had ten (10) years to submit a project proposal but either were unresponsive or their proposals were not the type of project that is considered eligible for funding under either the AML Program or SMCRA. Because of the long term difficulty that Hopi AML has experienced in obtaining viable Public Facility or Infrastructure Projects from the remaining Villages, OSM recommended in EY-2004 and EY-2005 that Hopi AML switch their emphasis to funding Tribal-wide projects so that Hopi AML funds could be properly utilized for the benefit of the Hopi Tribe.

Such a policy change would allow the Hopi AML Program to interact with the Hopi Tribal Council rather than Villages. Individual Villages often lack the human resources needed to fully develop viable and eligible projects and many Villages have unstable governing bodies. Although Tribal wide projects are typically larger in scope and require substantially more funds, partnership funding (matching funds) appears to be more widely available for Tribal-wide projects, the Tribal government may be more inclined and motivated to propose and implement a viable project and these projects typically have tribal-wide benefits (benefit all Villages).

In EY-2006 the Hopi AML Program notified the Villages by letter that the \$200,000 that the Hopi AML Program originally reserved for each Village to construct a PFP would be forfeited unless the Hopi AML Program received a viable and fundable (eligible) project proposal package by May 31, 2006. OSM viewed the imposition of this deadline as a very positive step by Hopi AML and a much needed policy change for the Program to remain effective (have projects in construction). OSM commends the Program for instituting this deadline. Hopi AML funds, from non-responsive Villages, can now be recommitted to areas where they will certainly be used.

In response to the letter implementing a deadline for project submission, Hopi AML considers four (4)

Villages to have met the requirements of the deadline. These are: 1) the Village of Moenkopi submitted several “project ideas” one of which is a water development project that is considered eligible for funding and a Village resolution was submitted to authorize the project; 2) the Village of Sichomovi submitted an eligible proposal for the construction of a senior citizen center; 3) the Village of Tewa has been working with Hopi AML for over a year to develop a fundable modular office building; and, the Village of Walpi has been working with Hopi AML for over a year to develop a fundable bath-house and office building. Hopi AML is going to continue working with these Villages to get these projects funded and under construction.

Three other villages did not meet the deadline for submission of a viable project. These three non-responsive Villages are Shungopavi, Mishongnovi and Old Orabi. Hopi AML indicated that they will no longer reserve PFP funds for these three (3) Villages. The Hopi AML Program has the authority to withdraw funding for non-responsive Villages.

The Village of Mishongnovi was previously working with the Hopi AML on submission of a project proposal for a water development project, however, the Village did not submit a proposal by the deadline so this project is no longer being considered for funding by Hopi AML. The Village of Shungopavi was also interacting with Hopi AML on a potential project proposal, however, it no longer has a governing Board and it has since lost \$100,000 in matching funds making this project also moot.

Previous Annual Evaluation Reports recommended that Hopi AML Program strive harder or find innovative ways to get projects in the project planning and development stage and subsequently, into construction. It appears that the Hopi AML program has taken the necessary steps to make this happen. OSM believes that effective project planning and development would help to provide a continuous stream of projects in construction as well as to show that the AML Program has the capability to utilize its tribal-share balance that currently exists in “unallocated” state/tribal share funds.

Hopi AML has assured OSM that it is trying to get viable project proposals from the Village governing bodies, however, there have been ongoing obstacles at the Village level that have hindered the process and which Hopi AML has no control over. In 2005, the Hopi AML Program agreed that a deadline should be imposed on non-responsive Villages to submit eligible PFPs for funding. As a result of this change in policy, emphasis will now be shifted away from Village projects in favor of Tribal-wide projects. However, the Program remained open to funding Village project proposals that were submitted by the May 30, 2006 deadline, if they are determined to be eligible under SMCRA for AML funding.

The Hopi AML Program also expressed concern that their annual appropriation of about \$400,000 severely limits their ability to pursue larger Tribal-wide projects. The Hopi AML Program has now accumulated funds for two years in order to amass sufficient funds for a tribal wide project. These AML funds can also be combined with funds from other Federal, State or Tribal sources in order to bring a PFP to fruition. The Program has been very successful with such partnership arrangements in the past such as the water treatment facility at the Hopi High School.

[AML Program Accomplishments During the Evaluation Period](#)

In EY-2005, OSM reported that AML reclamation maintenance surveys were conducted on past

reclamation sites. This is consistent with Program certification requirements and the Hopi AML Plan. The survey work concluded that some maintenance work was needed on eight sites. Hopi AML is still in the process of developing a scope of work for the reclamation maintenance work so that it can be contracted out later this year. OSM did not receive a NEPA package or a request for an authorization to proceed with the project as of June 30, 2006.

During EY-2005 period the Hopi AML Program was involved with three Villages in finalizing project proposals for PFP funding and project development. These potential PFPs are the Walpi - Bathroom Addition; the Sichomovi - Senior Housing Project; the Tewa - Modular Office Building and the Lower Moencopi - Water Development Project. All four projects were in the planning and development stages. Hopi AML anticipated that the Tewa PFP will likely be funded soon and would enter construction in late 2005 or early 2006. These projects did not move forward in 2006 as a result of ongoing issues within the villages.

1. Tewa Modular Office Building (Administrative Office Building).

A potential Hopi AML PFP is for the Village of Tewa to purchase and set-up a 3,920 square foot (56 ft. X 57 ft.) modular building. The Village will contribute additional funds to provide water, sewer, and electrical utilities to the building. The village has a land use plan that includes construction of the building. Environmental / NEPA clearances have been completed and SHPO concurrence has been obtained; the project application was not submitted in EY-2006 pending the Village securing service line agreements for water, sewer, and electrical services. The status of this project has not changed from what was reported in the 2003, 2004 and 2005 annual evaluation reports.

Hopi AML has informed OSM that it still anticipates the Tewa Modular Office Building Project will be funded and may commence construction in EY-2007. As of this report, this project is still in the planning stages and has not been formally submitted to OSM for funding and approval.

2. Walpi Bathhouse Renovation and Office Addition Project.

The Village of Walpi is one of the oldest inhabited establishments in North America.

The Village Council submitted a Council Resolution for PFP projects, which include expansion to the existing bathhouse and the construction of a new addition for Village office space for administration personnel. Expansion to the existing "bath house" building will include an administrative office, maintenance office, a kitchen area and storage space. The existing bath house provides shower facilities for area residents whose homes do not currently have running water and associated facilities.

The project would potentially impact less than one acre. A categorical exclusion is expected to be prepared for NEPA compliance. The status of this PFP has not changed from what was reported in the 2003, 2004 and 2005 annual evaluation reports, however the project is expected to ultimately enter construction in EY-2007.

3. Sichomovi – Senior Housing Project

This potential project will involve the construction of a senior citizen center building. The Sichomovi Village plans to build twenty (20) two bed-room fully handicapped accessible units for the elderly. The homes will help serve to keep Hopi elders home on the reservation as opposed to their being sent out to

nursing homes in Phoenix and other outside towns. The two bed-room facilities will enable a care provider to live with the elder when it becomes necessary.

The entire cost of the Senior Housing Project is \$2,549,228.00; AML funding (\$200,000.00) will be leveraged by organizations such as the Arizona Department of Housing which has already approved funding of \$70,000.00 to be used for planning. The Village is also currently seeking other funding and has applied for a housing grant in the amount of \$750,000.00.

The Project is supported by the Hopi Tribal Council through Resolution H-035-2006 which supports the Master Lease. A FONSI has been approved by the Bureau of Indian (BIA) Affairs for NEPA compliance and another categorical exclusion document will be prepared for OSM approval.

4. Lower Moenkopi Village – Water Development Project.

This potential project will involve the rehabilitation of an existing spring box, construction of a water treatment building, and improvement of the water distribution system. The spring is the sole drinking water source of the Village; the water is currently obtained from spring discharge and is distributed by a gravity driven piping system to three watering points within the Village. Other improvements may include installation of a cistern at the source and either replacing or adding another storage tank.

The Village has entered into an agreement with a consulting firm to conduct a field investigation to generate recommendations for capital improvements and associated costs. The results of the study are expected to be completed in September 2006.

TABLE 1
Status of Public Facility Projects

Project	Village	Status (Funded or Completed)	Funded to Date
Bacavi Plaza Restoration	Bacavi	Completed 01/98	\$200,000. AML \$ 62,722. Az. H.Fnd.
Hopi HS reverse osmosis water purification	Tribal-wide	Completed 11/98	\$100,000. AML \$250,000. BOR
Moenkopi community & youth center	Moenkopi	Completed 09/99	\$235,000. AML \$100,000 Moenkopi
Sipaulovi cultural & historic resources	Sipaulovi	Completed 03/01	\$225,000. AML \$ 54,185. Sipaulovi
Mishongnovi sewage facility	Mishongnovi	Project abandoned	\$ 13,225. AML for EA
Polacca day school multi-purpose bldg.	Polacca	Project abandoned. (new school built in lieu of project).	\$ 2,066. AML for EA
Westside Wildland Fire Station	Tribal-wide	Completed 2002	\$ 36,073. AML for NEPA only.
Kykotsmovi -Sewage Lagoon Treatment Facility Project	Kykotsmovi	Construction began 10/17/01. Completed 09/17/02.	\$215,000. AML \$200,000 IHS \$350,000. USDA-RD
Yu-Weh-Loo Pah-ki (Spider Mound) water well & fluoride treatment Project	Spider Mound	Well Completed 2003. Pump-house is pending.	\$215,000. AML (\$55K not used & remains for Village)
Shongopavi Community Bldg. Renovation	Shongopavi	Project abandoned (no matching funds).	\$35,000 AML spent for project development.
Hopi Conference & Wellness Center	Tribal-wide	Completed 12/24/04	\$1.8 Million AML
Hotevilla Youth / Elderly Center	Hotevilla	Completed 11/01/04	\$235,414. AML \$300,000 Hotevilla
Public Coal Project & Equip. Rental Pgm.	Tribal-wide PFP	Completed	\$341,352 AML, (then Self-sustaining)
Tewa Modular Off. Bldg.	Tewa	In Proj. Development	\$0 Pending - AML \$0 Pending Tewa
Water Development Project	Lower Moencopi	Project Proposal Stage	\$0
N/A	1 st Mesa Consol.	Missed proposal deadline	\$0
N/A	Old Oraibi	Missed proposal deadline	\$0
Water Development Project	Mishongnovi	Missed proposal deadline	\$0
Walpi – Bath-house and office addition Project	Walpi	Hist. Renov. & Planning	\$0
Turquoise Community	Tribal-wide	Planning ongoing by Tribal government	\$4,888. - AML for Arch. & Eng.
Sichomovi – Elderly Center	Sichomovi	Met proposal deadline	\$0 Pending
Total Hopi AML	Pgm. Funding		\$3,422,604
Total Project Funding	(All Sources)		\$4,739,511

PART IV. ACCOMPLISHMENTS AND RECOMMENDATIONS

Conclusions and Recommendations:

Past OSM evaluation of the Hopi AML Program determined:

- the Program is a cost effective Program and PFPs (completed) are of excellent quality;
- the Program has sought out public involvement on the Hopi Reservation in determining project priorities and selecting projects;
- the Program has done an exemplary job of ensuring that projects proposed for funding meet the eligibility requirements of SMCRA;
- the Program has routinely scheduled and sponsored oversight tours of construction projects as necessary and has efficiently provided information to OSM when requested.

OSM now believes that the Program's effectiveness may have diminished during EY-2005 and EY-2006. For the last two years the Hopi AML Program was unable to bring any reclamation or PFPs into construction. The Hopi AML Program has spent a considerable amount of funds for Program Administration (approximately \$400,000 total in EY-2005 and EY-2006) while zero dollars have been authorized for project construction during that same period. Consequently, OSM now has concerns about the cost-effectiveness of the Program.

Given the small size of the Hopi AML Program, OSM would not want to see the Hopi Program have any of its already limited funds, revert back to OSM for distribution to other AML Programs pursuant to the following OSM regulations:

30 CFR 872.11(b)(1) states: *"Amounts granted to a Tribe that have not been expended within three years from the date of the grant award shall be available to the Director of OSM for other purposes under paragraph 872.11(b)(5)..."*

30 CFR 886.18(a)(2) states: *"If an agency fails to obligate moneys distributed and granted within three years from the date of the grant award, or within an extension granted under 888.13 or 886.17, OSM may reduce the grant in accordance with 872.11(b)(1) and (b)(2)..."*

OSM expressed its concerns that Hopi AML find a way for the Program to get projects back on track before the end of EY-2007 (June 30, 2007). OSM-AFO held a meeting with Hopi AML on August 16, 2006, wherein OSM-AFO requested that Hopi AML develop a plan to address OSM concerns and to hopefully get one or more projects under construction by the end of EY-2007. OSM's goal is to ensure that the Hopi AML Program continues and is effective in meeting the Program's objectives.

Based upon the meeting held on August 16, 2006, it is currently OSM-AFO's understanding that the Hopi AML Program has developed and instituted the policy and procedural changes necessary to achieve funding and construction of planned AML projects. OSM-AFO believes that these new procedural and policy changes will ensure that the Hopi Tribe will continue to receive its AML funding and that those funds will be promptly used to realize PFPs that provide benefit for the Hopi people.

OSM recognizes that the Hopi AML Program is a small Program and that many of the obstacles that the

Program faces are in large part due to external factors such as Village politics and the lack of adequate resources at the Village level, however, this should not prevent Hopi AML from initiating and completing reclamation maintenance projects or Tribal-wide public facility projects.