§ 874.13 Reclamation objectives and priorities.

(a) When you conduct reclamation projects under this part you may follow OSM’s “Final Guidelines for Reclamation Programs and Projects” (66 FR 31250, June 11, 2001) and the expenditures must reflect the following priorities in the order stated:

(1) **Priority 1:** The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:
   (i) Have been degraded by the adverse effects of coal mining practices; and
   (ii) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) **Priority 2:** The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:
   (i) Have been degraded by the adverse effects of coal mining practices; and
   (ii) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(b) Surface coal mining operations on lands eligible for remining pursuant to Section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by §800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under Section 410 of the Act.

(3) **Priority 3:** The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.

(b) This paragraph applies to State or Tribal share funds available under §§872.14 and 872.17 of this chapter and historic coal funds available under §872.21 of this chapter. You may expend these funds to reclaim Priority 3 lands and waters, if either of the following conditions applies:

1. You have completed all of the Priority 1 and Priority 2 reclamation in the jurisdiction of your State or Indian tribe; or

2. The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects including past, current, and future Priority 1 or Priority 2 reclamation projects. Expenditures under this paragraph must either:

   i. Facilitate the Priority 1 or Priority 2 reclamation; or

   ii. Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.

[73 FR 67639, Nov. 14, 2008]

§ 874.14 **Water supply restoration.**

(a) Any State or Indian tribe that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under §§872.16, 872.19, 872.23, and 872.31 of this chapter for water supply restoration projects. For purposes of this section, “water supply restoration projects” are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State or Indian tribe may expend up to 30 percent of the funds distributed to it for water supply restoration projects.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.


§ 874.15 **Limited liability.**

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28172, May 31, 1994]