

KENTUCKY RECLAMATION GUARANTY FUND 2020 STATE FISCAL YEAR ANNUAL REPORT



Kentucky Reclamation Guaranty Fund Commission
300 Sower Boulevard
Frankfort, Kentucky 40601

November 2, 2020



TABLE OF CONTENTS

KRGF Mission.....4

KRGF History.....5

KRGF Commission6

ORGF Staff7

Duties and Functions of the Commission8

Provisions and Requirements of the KRGF.....9

Annual Classification10

KRGF Bonding Activity13

KRGF Audit14

KRGF Investment Strategy.....15

KRGF Monies Used for Reclamation of Forfeited Mine Sites.16

KRGF Financials.....18

ORGF Financials21

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KRGF MISSION

The Kentucky Reclamation Guaranty Fund is an interest bearing account established for the purpose of providing additional monies for the reclamation of forfeited coal mining operations where the permit specific performance bonds are insufficient for the Commonwealth to complete reclamation to program standards. Participation in the Fund is mandatory for all companies mining coal in the Commonwealth, with certain exclusions. The Fund is sustained through the annual assessment and collection of coal tonnage and acreage fees paid by participating companies, and accrued interest.



KRGF HISTORY

The United States Office of Surface Mining, Reclamation and Enforcement (OSM) issued a report entitled “National Priority Oversight Evaluation, Adequacy of Kentucky Reclamation Performance Bond Amounts” in January 2011 following a lengthy study of Kentucky’s bonding requirements. The study determined Kentucky bonds were inadequate to complete reclamation in a significant number of bond forfeitures. OSM sent Kentucky a Part 733 letter on May 1, 2012 notifying Kentucky that its reclamation bonding program was deficient which required immediate and long term steps to ensure bond amounts are adequate to complete reclamation upon forfeiture.

Kentucky addressed the letter’s demands by adopting regulatory amendments that increased individual bond amounts, which became final September 2012. In addition, The Energy and Environment Cabinet (EEC) proposed the establishment of the Kentucky Reclamation Guaranty Fund (KRGF) during the 2013 session of the General Assembly. The legislation was passed by the General Assembly and signed into law by the Governor on March 22, 2013.

The KRGF, administratively attached to the EEC, was established on July 1, 2013, along with the KRGF Commission to administer the Fund. The legislation also established the Office of the Reclamation Guaranty Fund (ORGF), attached to the Department for Natural Resources (DNR), to perform administrative functions in support of the Commission.

The Kentucky Bond Pool, established by KRS 350.700, and the Kentucky Bond Pool Commission, established by KRS 350.705, were abolished. All assets, obligations, and liabilities of the former bond pool were transferred to the KRGF.

The Cabinet, on behalf of the Commission, filed new regulations 405 KAR 10:070, 405 KAR 10:080 and 405 KAR 10:090 that became effective on November 7, 2013. Also filed were amendments to 405 KAR 8:010, 405 KAR 10:001 and 405 KAR 10:015. These amendments and regulations were necessary to enact the requirements of the statute and further detail the duties and functions of the Commission and the ORGF. In November, 2014, the Cabinet, on behalf of the Commission, promulgated 405 KAR 10:025. The regulation provides the Commission the authority to issue bonds to mining companies seeking to succeed to permits issued to members of the former Kentucky Bond Pool for which the Cabinet has initiated bond forfeiture proceedings. This ability to issue bonds to the industry at large can result in a savings to the KRGF in that a viable successor company will complete mining and reclamation operations on a permit at no cost to the Fund and reduce the environmental impacts of an unreclaimed mine site in a timely manner.



KRGF COMMISSION

The Commission is comprised of seven members representing the Cabinet, coal, financial, and insurance industries. Members of the coal industry represent small, medium, and large coal producers with respect to the tonnage mined on an annual basis. Representatives from the financial and insurance industries have experience related to the coal industry. The members are appointed to various terms of two, three and four years. In accordance with KRS Chapter 350.506, the Commission currently meets on a quarterly basis, unless otherwise necessary.

The Commission is comprised of the following:

Rebecca Goodman, Secretary of EEC
Chairman of the Commission

Bill Adams, Frankfort, KY
Retired, Cumberland Surety, Inc.

Kelly Short, Richmond, KY
Blackhawk Mining, LLC

Paul Horn, Prestonsburg, KY
Booth Energies

Kenneth Allen, White Plains, KY
First United Bank & Trust Co.

Lyman Hager, Lexington, KY
RFH, PLLC

Michael Ivey,
Retired, Locust Grove, Inc.

ORGF STAFF

The ORGF employs the following individuals to perform the function and duties of the KRGF Commission:

Danielle Crosman
Executive Director

Vacant
Program Coordinator

Joe Adcock
Staff Assistant

Vacant
Executive Staff Advisor





DUTIES AND FUNCTIONS OF THE COMMISSION

In accordance with KRS Chapter 350.509, the Commission is charged with the review, recommendation and promulgation of regulations necessary to:

- Monitor and maintain the fund;
- Review and assign classification of mine types; and
- Establish a structure for the payment of fees and assessments.
- Establish a structure for processing claims and making payments;
- Establish the mechanisms to review the viability of the fund;
- Set a schedule for penalties for late payment or failure to pay fees and assessments;

In addition, the Commission, through the ORGF performs the following functions:

- Notifies permittees of suspension or reinstatement of fees;
- Conducts an audit of the fund every two years or more frequently as deemed necessary by the Commission;
- Performs an actuarial study every two years or more frequently as deemed necessary by the Commission;
- Authorizes expenditures from the fund;
- Reports to the Governor and Interim Joint Committee on Natural Resources and Environment annually;

- Conducts investigations to verify reporting, payment, and other activities of permittees; and
- Brings actions as necessary in Franklin Circuit Court against any permittee for the recovery of funds spent by the Commission by reason of forfeiture of that permittee.



PROVISIONS AND REQUIREMENTS OF THE KRGF

- As required by KRS 350.515, the Commission assessed Initial Capitalization Fees on August 1, 2013. These fees were comprised of an assessment of \$1,500 per permittee (member entity) for every company holding a coal mining permit in the Commonwealth as of July 1, 2013; and an assessment of \$10 per active permitted and bonded acre for all permits held by a permittee, with certain exclusions;
- Permittees that were members of the former voluntary Kentucky Bond Pool continue to receive bond subsidies by the Fund for existing permits and for new permits, subject to certain restrictions;
- Other permittees may have bonds subsidized by the KRGF in the future subject to future approval and implementation by the Commission; and

- New permittees, having never mined coal in the Commonwealth and becoming members of the Fund after July 1, 2013, are required to pay a one-time fee of \$10,000 prior to issuance of their first permit.

ANNUAL CLASSIFICATION

In January 2020, the Commission assigned classifications to all eligible permits in the state for the purpose of collecting annual tonnage and acreage fees to maintain a revenue stream for the Fund. In accordance with KRS 350.518, these fees are comprised of:

- 7.57 cents per ton for “Surface” coal mining operations, including auger and highwall mining;
- 3.57 cents per ton for “Underground” coal mining operations;
- Permits approved for both methods of operation (“Combination”) will pay a tonnage fee according to the predominant method of extraction;
- \$10 per bonded acre for permits classified as “Non-production”. Examples of non-production permits are: preparation plants, coal refuse fills & impoundments, haul road only permits, load-outs, and permits that only contain acreage for mine maintenance and other support facilities; and
- \$6 per bonded acre for permits classified as “Dormant”. Dormant permits consist of all remaining permits that have not achieved an initial phase of bond release or did not produce coal in a calendar quarter.

Permits, and increments of permits, that have received at least a Phase I bond release or are undisturbed are exempt from these fees. These fees are paid on a calendar quarter basis, with payments due within thirty days of the close of the quarter. A 5%, or \$100 minimum late fee or penalty is assessed per permit for non-payment, late payment or underpayment, in accordance with 405 KAR 10:070 Section 4. See Figure I.

Figure I provides the distribution of the permits according to classification; however, it includes transfers of permits from one entity to another throughout 2020.

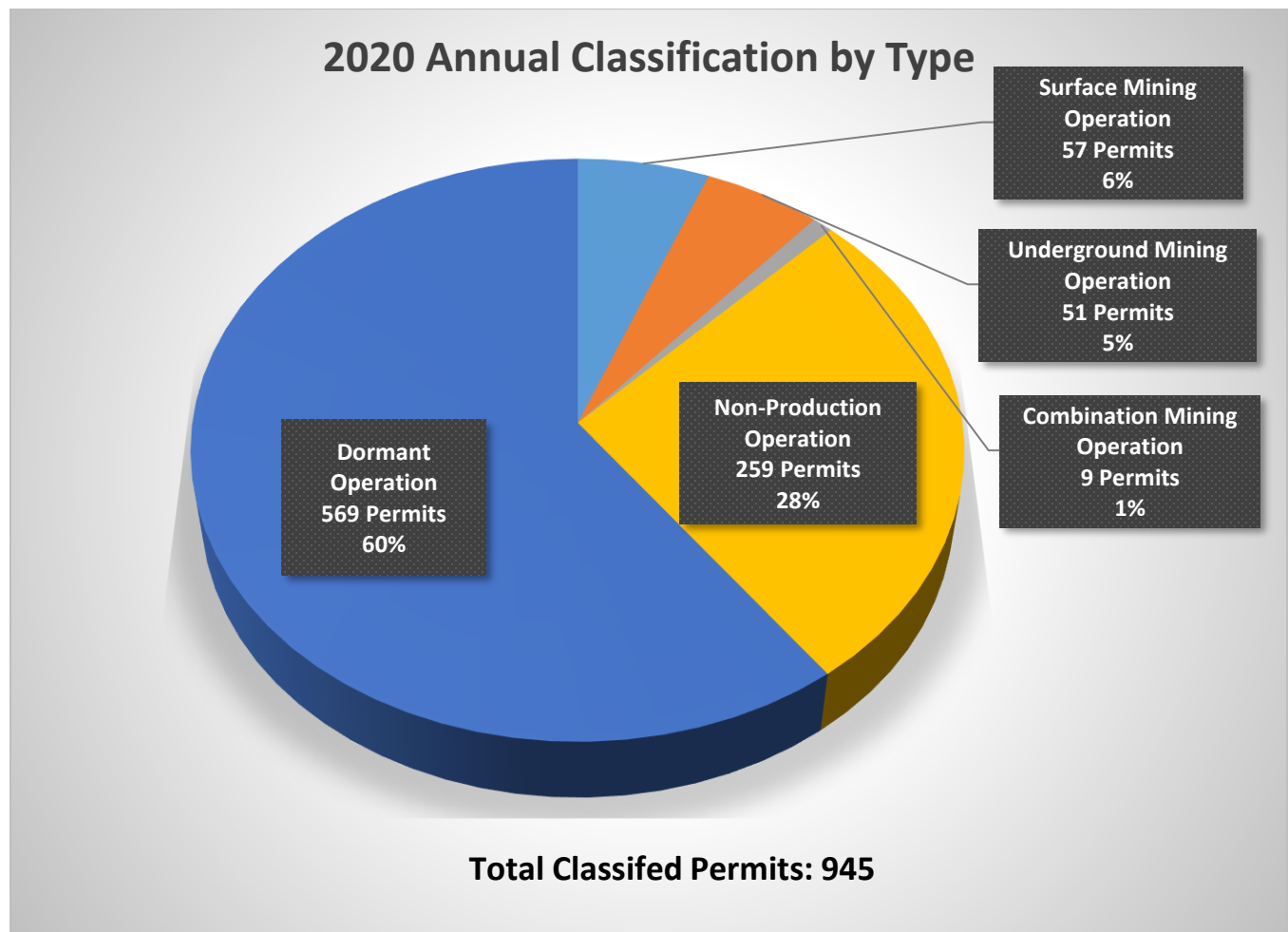


FIGURE 1

In 2020, payments to the KRGF were received for acreage fees, tonnage fees, membership fees and penalties. Please see Figure 2 below for the distribution of fees paid in each classification.

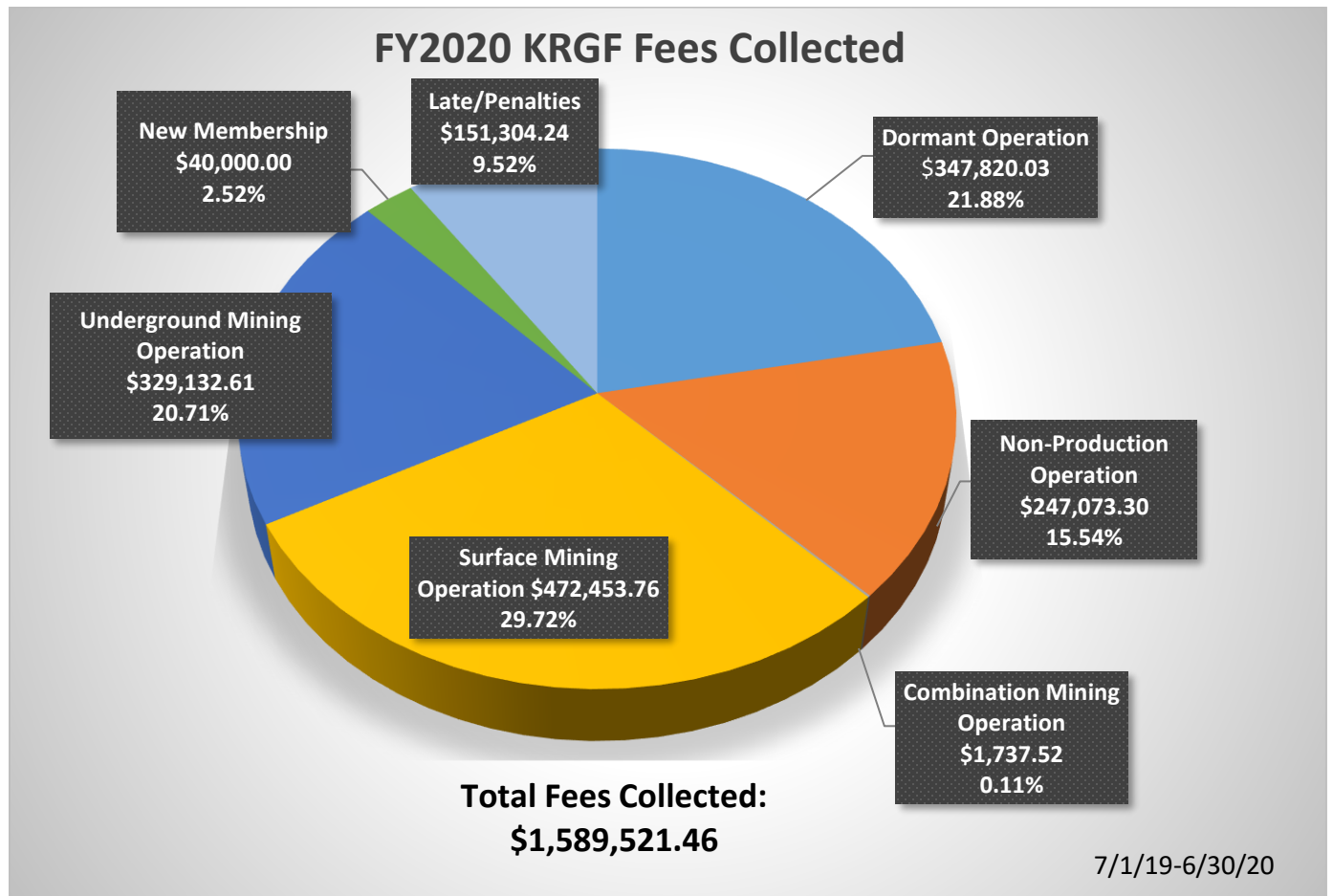


FIGURE 2

Table 1 depicts the distribution of tonnage of coal mined and sold for the production classifications and that mined and sold under the dormant and non-production classifications, as of June 30, 2020.

KRGF CLASSIFICATION	SURFACE PRODUCTION	UNDERGROUND PRODUCTION
Surface Mining Operations	3,600,068.33	60,673.22
Underground Mining Operations	8,836.56	5,442,564.75
Combination Mining Operations	182,361.81	1,602,999.14
Dormant Mining Operations	916,590.61	711,696.40
Non-Production Operations	23,929.37	492,092.22
Total	4,731,786.68	8,310,025.73

TABLE 1

KRGF BONDING ACTIVITY

As previously described, members of the former Kentucky Bond Pool receive bond subsidization from the KRGF for existing and new permits. Existing permits continue to pay permit-specific bonds at a rate of \$500/acre, while new permits issued after July 1, 2013 pay permit specific bonds at a rate of \$2,000/acre. The KRGF provides the remainder of the total original bond amount.

KRGF bonds written and posted to former Kentucky Bond Pool members from July 1, 2019 through June 30, 2020:

NUMBER OF PERMITS	NUMBER OF BONDS	BONDED ACRES	BOND AMOUNT
6	20	161.34	\$459,400.00

TABLE 2

Bond Release Activity for permits held by former Kentucky Bond Pool members from July 1, 2019 through June 30, 2020:

BOND RELEASE PHASE	NUMBER OF PERMITS	ACREAGE AFFECTED	BOND LIABILITY REDUCTION
Phase I	3	756.54	\$1,489,900.00
Phase II	3	267.76	\$179,950.00
Phase III	2	170.38	\$188,800.00

TABLE 3

KRGF AUDIT

In accordance with the requirements of 350.509(3), an audit of the KRGF is required for the first five years of operation of the Fund. The first five years have been completed and published by the APA. The KRGF was recently audited for SFY2020 and the audit can be found on the APA's website.

KRGF INVESTMENT STRATEGY

At the close of state fiscal year 2020, the balances of the funds were \$39,175,749.06 and \$13,829,965.32. See Table 4 and Figures 3 & 4 regarding the amount of interest these three accounts accrued during state fiscal year 2020.

LIMITED TERM POOL INTEREST EARNED	INTERMEDIATE TERM POOL INTEREST EARNED
\$144,927.80	\$1,055,572.12

TABLE 4

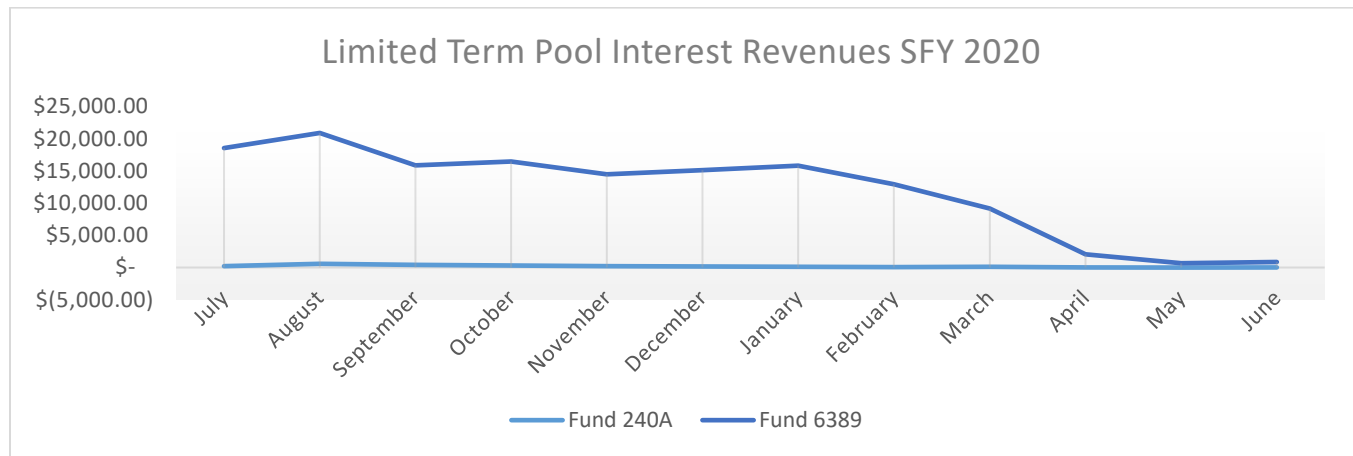


FIGURE 3

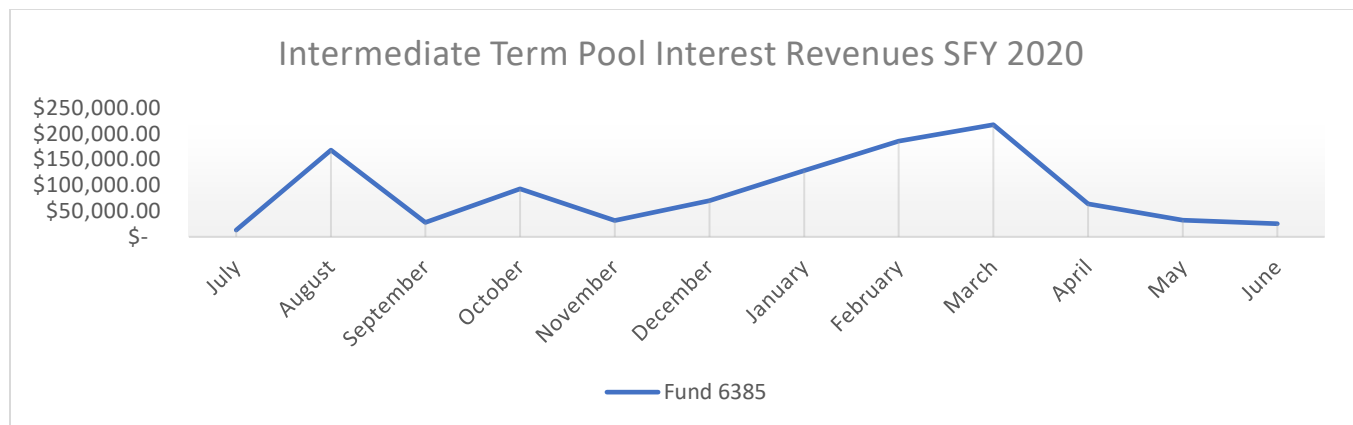


FIGURE 4

KRGF MONIES USED FOR RECLAMATION OF FORFEITED MINE SITES.

In accordance with its statutory mandate, the Fund provides additional money to assist in the reclamation of forfeited mine sites. The Division of Abandoned Mine Lands (DAML), of the Department for Natural Resources is the agency responsible for performing reclamation on behalf of the Commonwealth of Kentucky on all bond forfeitures. Since July 1, 2019 eleven (11) permits were forfeited for a total amount of \$3,151,274.23. During that same period, the ORGF transferred permit-specific bonds for eight (8) permits to DAML in the amount of \$1,574,944.03. See Table 5.

In state fiscal year 2020, the Fund provided two (2) additional money in the amount of \$462,572.75 for the reclamation of forfeited mine sites. Figure 5 reflects the forfeiture activity for state fiscal year 2020.

PERMITS FORFEITED	PERMITS RECEIVING PAYOUTS FOR RECLAMATION	PERMITS NEEDING EXCESS FUNDS FOR RECLAMATION
11	8	5

TABLE 5

2020 Bond Forfeiture and Reclamation Revenues and Payouts				
BOND FORFEITURE MONIES RECEIVED	ORIGINAL BOND MONIES TRANSFERRED TO AML FOR RECLAMATION	EXCESS FUNDS TRANSFERRED TO AML FOR RECLAMATION	TOTAL TRANSFERRED TO AML FOR RECLAMATION	UNSPENT ORIGINAL BOND MONIES RETURNED FROM KRGF TO FINANCIAL INSTITUTIONS
\$3,151,274.23	\$1,112,371.28	\$462,572.75	\$1,574,944.03	\$0.00

FIGURE 5

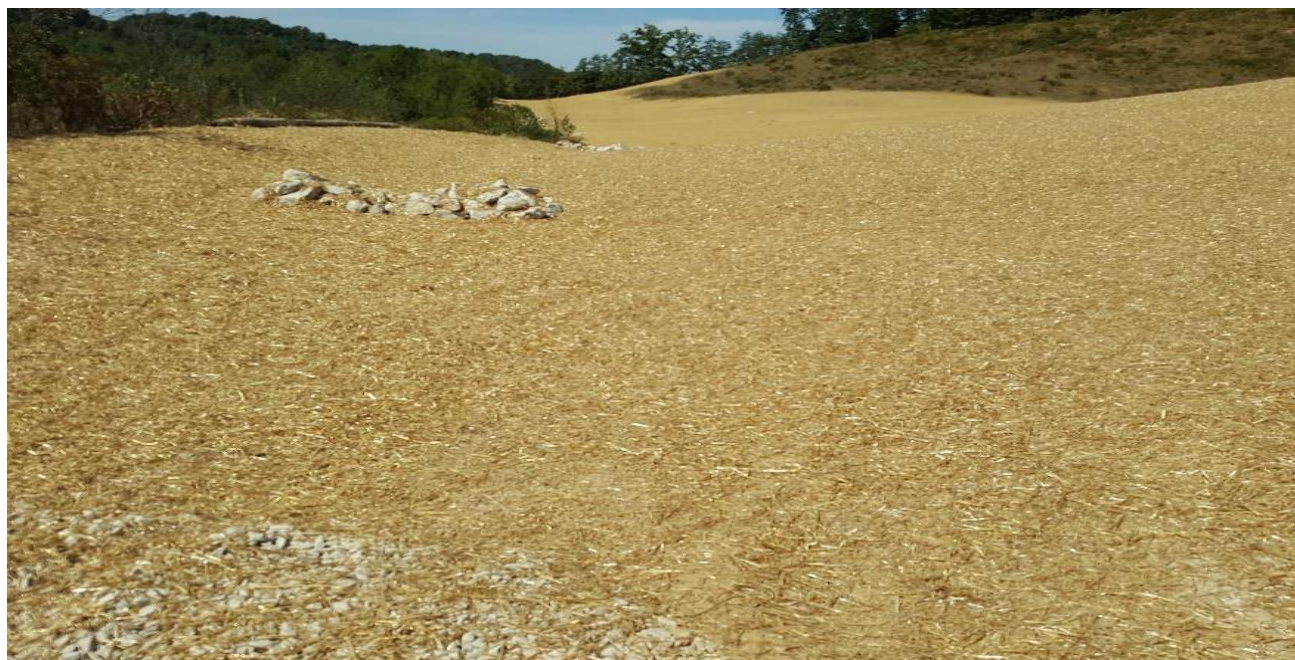
CASE STUDY OF KRGF FUNDED DAML RECLAMATION

ACPKY 863-0315/ LAUREL COUNTY, KENTUCKY	
Original Performance Bond Forfeiture	\$13,400.00
Excess Payout from the KRGF	\$10,028.20
Total to Complete Reclamation	\$23,428.20

TABLE 6



MINE CONDITION AT TIME OF BOND FORFEITURE



CURRENT CONDITION UPON COMPLETION OF RECLAMATION BY DAML

KRGF FINANCIALS

The Kentucky Reclamation Guaranty Fund (KRGF) and the associated Office of the Reclamation Guaranty Fund (ORGF) operate as separate accounts and both receive only restricted funds and federal funds. No general fund monies are received or expended by either account.

The KRGF Fund is an off-budget account and receives revenue from coal mining entities with operations within the Commonwealth of Kentucky. Revenue for the Fund during state fiscal year 2020 consisted of membership fees, annual classification and production/tonnage fees, late payments/penalties, interest earned and a federal grant.

The KRGF began state fiscal year 2020 with a Fund balance of \$48,642,807.47, realized a net gain of \$5,937,850.94 in revenues and \$1,574,944.03 in expenses. This brought the state fiscal year 2020 ending Fund balance to \$53,005,714.38. See Table 7 and Figures 6, 7, & 8 for additional detail.

Month	Interest Earned	Regulatory Revenues	Bond Forfeiture Revenues	FUND Expenses Non-Forfeiture	Bond Forfeiture Expenditures	Fund Balance
Beginning KRGF Fund Balance 7-1-2020:						\$ 48,642,807.47
July	\$ 31,647.15	\$134,829.72	\$0.00	\$0.00	(\$224,848.00)	\$ 48,584,436.34
August	\$ 189,088.32	\$320,779.51	\$0.00	\$0.00	\$0.00	\$ 49,094,304.17
September	\$ 43,494.19	\$104,926.06	\$125,200.00	\$0.00	\$0.00	\$ 49,367,924.42
October	\$ 109,207.36	\$71,322.31	\$23,800.00	\$0.00	(\$67,477.00)	\$ 49,504,777.09
November	\$ 45,876.95	\$203,817.37	\$192,900.00	\$0.00	\$0.00	\$ 49,947,371.41
December	\$ 85,331.94	\$74,797.34	\$0.00	\$0.00	(\$23,428.20)	\$ 50,084,072.49
January	\$ 144,202.78	\$103,304.67	\$577,779.04	\$0.00	\$0.00	\$ 50,909,358.98
February	\$ 198,519.10	\$172,619.86	\$129,375.42	\$0.00	\$0.00	\$ 51,409,873.36
March	\$ 226,429.88	\$20,368.99	\$6,019.77	\$0.00	\$0.00	\$ 51,662,692.00
April	\$ 65,791.84	\$133,231.04	\$347,200.00	\$0.00	\$0.00	\$ 52,208,914.88
May	\$ 25,897.81	\$160,621.74	\$592,900.00	\$0.00	\$0.00	\$ 52,988,334.43
June	\$ 26,055.63	\$94,415.15	\$1,156,100.00	\$0.00	(\$1,259,190.83)	\$ 53,005,714.38
2019 Totals	\$ 1,191,542.95	\$ 1,595,033.76	\$ 3,151,274.23	\$0.00	(\$1,574,944.03)	\$ 53,005,714.38

TABLE 7

Kentucky Reclamation Guaranty Fund 2020 Annual Report

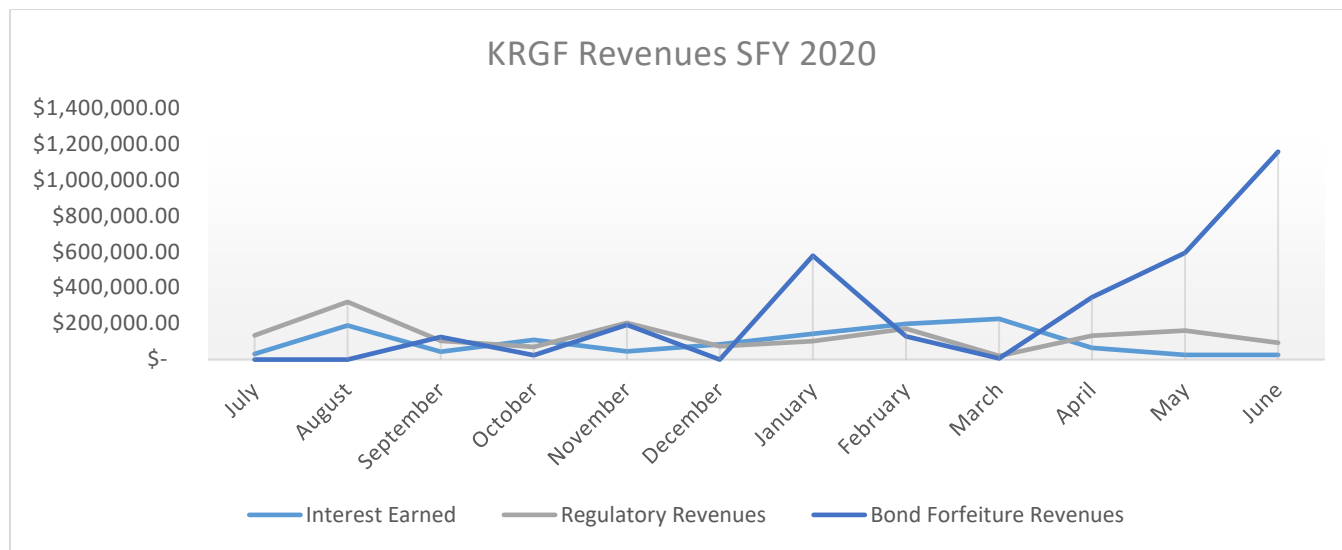


FIGURE 6

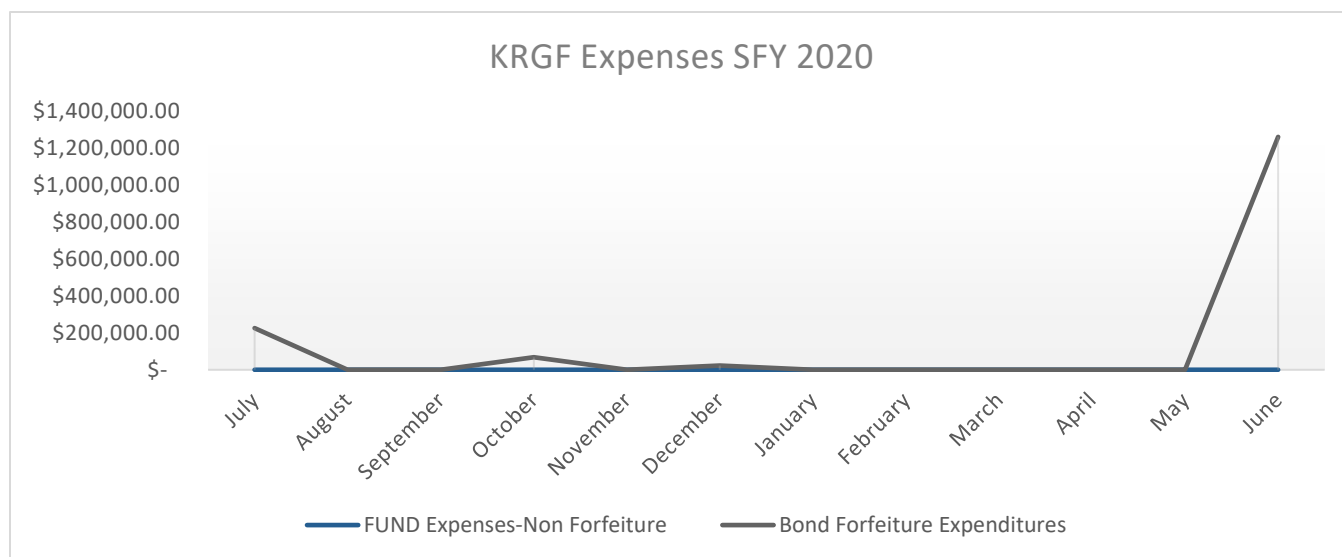


FIGURE 7

Kentucky Reclamation Guaranty Fund 2020 Annual Report

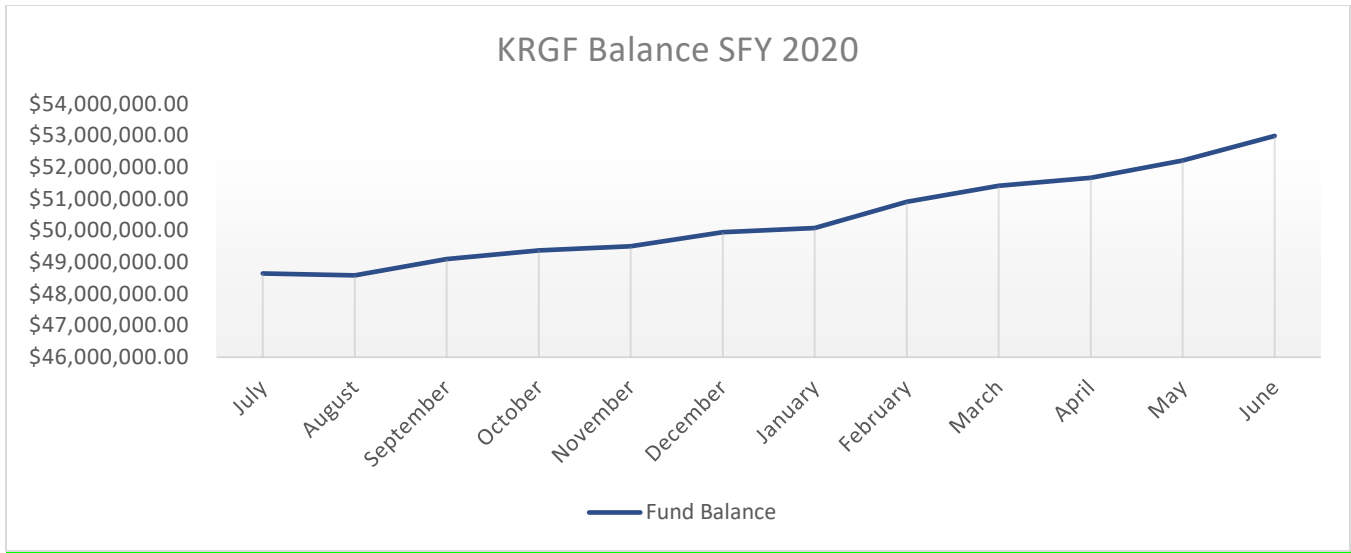


FIGURE 8

ORGF FINANCIALS

Administration of the Kentucky Reclamation Guaranty Fund (KRGF) is executed through an On-Budget Account utilized by the Office of the Reclamation Guaranty Fund (ORGF) to pay for the personnel and related operating expenses of the ORGF and the KRGF Commission.

Expenditures are monitored and monies are transferred either quarterly or as necessary from the KRGF to the ORGF to cover operating expenses. The State Fiscal Year 2020 beginning budget for the ORGF was \$2,053,800.00.

The budgetary needs of the ORGF are consistently reviewed and are adjusted as necessary to meet the needs of the agency. (See Tables 8 and 9.)

July 1, 2018 through June 30, 2019

BUDGET ITEMS	BUDGETED	EXPENDITURES	BALANCE	NOTES
Personnel	\$844,800.00	\$425,947.37	\$418,852.63	
Operating	\$71,900.00	\$63,864.99	\$8,035.01	Includes New Invoicing & Reporting Software and KRGF Web Portal
Grants, Loans, and Benefits	\$20,000.00	\$19,068.00	\$932.00	
Year to Date Total	\$936,700.00	\$508,880.36	\$427,819.64	

TABLE 8

July 1, 2019 through June 30, 2020

BUDGET ITEMS	BUDGETED	EXPENDITURES	BALANCE	NOTES
Personnel	\$1,572,400.00	\$711,651.47	\$860,748.53	
Operating	\$481,400.00	\$56,546.14	\$424,853.86	Includes SMIS Upgrade, Invoicing & Reporting and KRGF Web Portal
Grants, Loans, and Benefits	\$0.00	\$0.00	\$0.00	
Year to Date Total	\$2,053,800.00	\$768,197.61	\$1,285,602.39	

TABLE 9