

**JOBS AT RISK: WASTE AND MIS-
MANAGEMENT BY THE OBAMA
ADMINISTRATION IN REWRIT-
ING THE STREAM BUFFER
ZONE RULE**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Friday, November 4, 2011

Serial No. 112-82

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.fdsys.gov>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

71-120 PDF

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
EDWARD J. MARKEY, MA, *Ranking Democrat Member*

Don Young, AK	Dale E. Kildee, MI
John J. Duncan, Jr., TN	Peter A. DeFazio, OR
Louie Gohmert, TX	Eni F.H. Faleomavaega, AS
Rob Bishop, UT	Frank Pallone, Jr., NJ
Doug Lamborn, CO	Grace F. Napolitano, CA
Robert J. Wittman, VA	Rush D. Holt, NJ
Paul C. Broun, GA	Raúl M. Grijalva, AZ
John Fleming, LA	Madeleine Z. Bordallo, GU
Mike Coffman, CO	Jim Costa, CA
Tom McClintock, CA	Dan Boren, OK
Glenn Thompson, PA	Gregorio Kilili Camacho Sablan, CNMI
Jeff Denham, CA	Martin Heinrich, NM
Dan Benishek, MI	Ben Ray Lujan, NM
David Rivera, FL	John P. Sarbanes, MD
Jeff Duncan, SC	Betty Sutton, OH
Scott R. Tipton, CO	Niki Tsongas, MA
Paul A. Gosar, AZ	Pedro R. Pierluisi, PR
Raúl R. Labrador, ID	John Garamendi, CA
Kristi L. Noem, SD	Colleen W. Hanabusa, HI
Steve Southerland II, FL	Vacancy
Bill Flores, TX	
Andy Harris, MD	
Jeffrey M. Landry, LA	
Jon Runyan, NJ	
Bill Johnson, OH	
Mark Amodei, NV	

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
Jeffrey Duncan, *Democrat Staff Director*
David Watkins, *Democrat Chief Counsel*

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

DOUG LAMBORN, CO, *Chairman*
RUSH D. HOLT, NJ, *Ranking Democrat Member*

Louie Gohmert, TX	Peter A. DeFazio, OR
Paul C. Broun, GA	Madeleine Z. Bordallo, GU
John Fleming, LA	Jim Costa, CA
Mike Coffman, CO	Dan Boren, OK
Glenn Thompson, PA	Gregorio Kilili Camacho Sablan, CNMI
Dan Benishek, MI	Martin Heinrich, NM
David Rivera, FL	John P. Sarbanes, MD
Jeff Duncan, SC	Betty Sutton, OH
Paul A. Gosar, AZ	Niki Tsongas, MA
Bill Flores, TX	Vacancy
Jeffrey M. Landry, LA	Edward J. Markey, MA, <i>ex officio</i>
Bill Johnson, OH	
Doc Hastings, WA, <i>ex officio</i>	

CONTENTS

	Page
Hearing held on Friday, November 4, 2011	1
Statement of Members:	
Holt, Hon. Rush D., a Representative in Congress from the State of New Jersey	4
Prepared statement of	6
Lamborn, Hon. Doug, a Representative in Congress from the State of Colorado	1
Prepared statement of	3
Markey, Hon. Edward J., a Representative in Congress from the State of Massachusetts	7
Prepared statement of	8
Statement of Witnesses:	
Pizarchik, Hon. Joseph G., Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior	9
Prepared statement of	11
Response to questions submitted for the record	12

**OVERSIGHT HEARING TITLED “JOBS AT RISK:
WASTE AND MISMANAGEMENT BY THE
OBAMA ADMINISTRATION IN REWRITING
THE STREAM BUFFER ZONE RULE.”**

**Friday, November 4, 2011
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 11:05 a.m., in Room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Thompson, Duncan of South Carolina, Flores, Johnson, Holt, Markey, and Costa.

Mr. LAMBORN. The Committee will come to order. The Chairman notes the presence of a quorum, which under Committee Rule 3(e) is two Members.

The Subcommittee on Energy and Mineral Resources is meeting today to hear testimony on an oversight hearing on “Jobs at Risk: Waste and Mismanagement by the Obama Administration in Rewriting the Stream Buffer Zone Rule.”

Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee. However, I ask unanimous consent to include any other Members’ opening statements in the hearing record if submitted to the clerk by close of business today.

Hearing no objection, so ordered.

I am about to give my opening statement. Then I expect that the Ranking Member will give his opening statement. At that point, there will be a minute or two left in the voting, and we will have to take a recess to do this next series of votes. Then, I think we will have a window where we can come back and hear from you, sir, and have questions and wrap up this hearing.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. Thank you for your flexibility this morning. I now recognize myself for 5 minutes.

On Monday, September 26, of this year the Subcommittee held a field oversight hearing titled, “Jobs at Risk: Community Impacts of the Obama Administration’s Effort to Rewrite the Stream Buffer Zone Rule,” in Charleston, West Virginia, where we heard from State regulators, the coal industry, West Virginia now-Governor Tomblin, Senator Manchin, and many others directly about the adverse impacts to communities of the Administration’s proposed rule.

During today's hearing, we will hear from the Director of the Office of Surface Mining as part of the Committee's ongoing investigation into the rewrite of the 2008 Stream Buffer Zone Rule. In addition, we will also discuss the recent Secretarial Order requiring the merger of the Office of Surface Mining with the Bureau of Land Management. Parenthetically, let me say that this is a proposal I am deeply concerned about because it impacts the ability of the Nation to access vast coal reserves. Furthermore, there are clear statutory limitations prohibiting the OSM from leasing or promoting coal, which is the key responsibility of BLM, but more about that at another time.

Back to the Stream Buffer Zone Rule. Transparency and openness are laudable goals for any administration and are said to be goals of this Administration. The President has said, "My Administration is committed to creating an unprecedented level of openness in government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration."

After the testimony we heard in September and at the budget hearing in April, I can't say that I would characterize the current rulemaking process as an example of transparency and openness. The one exception might be from the June 18, 2010, Federal Register notice that said, "We had already decided to change the rule following the change of administrations on January 20, 2009."

Wyoming Governor Freudenthal made this point in a December 6, 2010, letter to you where he stated, "The action OSM is taking is a comprehensive rewrite of regulations under the Surface Mining Control and Reclamation Act, SMCRA, not a stream protection rule. The packaging of this major revision to a law that has served the country well for over 40 years as a 'stream protection rule' is misleading. Some of the changes being contemplated have broad implications and deserve thoughtful evaluation....Yet, we do not believe we have been given meaningful opportunities to comment and participate. Sections of the EIS with 25, 50, and even 100's of pages are distributed to the States with only a few days to read, review, and provide comment back to the agency."

The Western Governors Association and other cooperating agencies raised similar concerns with you in separate letters. In addition, they complained bitterly about the quality, completeness, and accuracy of the draft portions of the EIS that they had reviewed. Testimony at the West Virginia hearing from various States shows that they believe the serious shortcomings in how their input was solicited rises to the level of legally objectionable deficiencies of process.

This Committee has heard from industry, whose engineering analysis of the draft rule that was leaked earlier this year, showed that not only would mountaintop mines be affected by the new rule but the Nation's underground longwall and room and pillar mines as well.

One company has estimated that this would result in a loss of 40 percent of their eastern longwall minable reserves. At current market prices, this equates to a \$66 billion loss and a major hit to the U.S. taxpayer, and that is only one company we are talking about.

More than 130,000 Americans depend on coal production for their livelihood. Throughout the United States there are places where the only industry in town is the coal mine. While this Administration may think it is a preferred alternative to displace tens of thousands of workers, destroying coal mining will kill these one-industry towns, push tens of thousands of American families into poverty, and leave our Nation poorer, driving up the price of energy, all reversing the original intent of SMCRA.

SMCRA was designed to promote the development of fuel to help meet the energy needs of the American people while ensuring the extraction of coal be done in an environmentally responsible manner.

Our abundant natural resources have made the U.S. the richest country in the world, helped us win world wars, and raise our standard of living far above the rest of the world. Promoting increased access to those resources will continue to allow us to become less dependent on foreign sources of energy and mineral resources, create new private sector jobs, and add revenue to government coffers, reducing the national debt and thereby increasing our national and economic security.

Unfortunately, we have an Administration that sees thousands of job losses as the preferred alternative and rushes a major rule-making through by limiting public comment because their decision has already been made. This is poor policy and poor management and, in the end, will only make America poorer.

I now yield to the Ranking Member for 5 minutes.

[The prepared statement of Mr. Lamborn follows:]

**Statement of The Honorable Doug Lamborn, Chairman,
Subcommittee on Energy and Mineral Resources**

On Monday, September 26, of this year the Subcommittee held a field oversight hearing titled "*Jobs at Risk: Community Impacts of the Obama Administration's Effort to Rewrite the Stream Buffer Zone Rule*" in Charleston, West Virginia where we heard from state regulators, the coal industry, West Virginia Governor Tomblin, Senator Manchin and many others directly on the adverse impacts to communities of the Administration's proposed rule.

During today's hearing we will hear from the Director of the Office of Surface Mining as part of the Committee's ongoing investigation into the re-write of the 2008 Stream Buffer Zone Rule. In addition we will also discuss the recent Secretarial Order requiring the merger of the Office of Surface Mining with the Bureau of Land Management. A proposal I am deeply concerned about impacting the ability of the Nation to access our vast coal resources. Furthermore there are clear statutory limitations prohibiting the OSM from leasing or promoting coal which is a key responsibility of BLM.

It is frequently said that Transparency and openness, are laudable goals for any Administration and purportedly they are a goal of this Administration.

The President has said that "My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government."

After the testimony we heard in September and at the Budget hearing in April I can't say that I would characterize the current rulemaking process as a stellar example of "transparency or openness."

The one exception might be from the June 18, 2010 Federal Register Notice that said: "we had already decided to change the rule following the change of Administrations on January 20, 2009." And that's about where the "transparency and openness" ends.

Wyoming Governor Freudenthal's made this point in a December 6, 2010 letter to you where he stated: "The action OSM is undertaking is a comprehensive rewrite

of regulations under the Surface Mining Control and Reclamation Act (SMCRA) not a stream protection rule. The packaging of this major revision to a law that has served the country well for over 40 years as a “stream protection rule” is misleading. Some of the changes being contemplated have broad implications and deserve thoughtful evaluation. . . . Yet, we do not believe we have been given meaningful opportunity to comment and participate. Sections of the EIS with 25, 50, and even 100’s of pages are distributed to the States with only a few days to read, review, and provide comment back to the agency. States have been forced to withdraw staff from permitting and other critical areas in order to have any opportunity to provide feedback to OSM within the required timeframe.”

The Western Governors Association and other cooperating agencies raised similar concerns with you in separate letters. In addition, they complained bitterly about the quality, completeness and accuracy of the draft portions of the EIS that they had reviewed.

This Committee has heard from industry, whose engineering analysis of the draft rule that was leaked earlier this year, showed that not only would mountain top mines be affected by the new rule but the Nation’s underground long wall and room and pillar mines as well.

One company has estimated that this would result in a loss of 40 percent of their eastern longwall minable reserves. At current market prices this equates to a \$66 billion loss and a major hit to the US taxpayer. And that’s only one company we’re talking about.

More than 130,000 Americans depend on coal production for their livelihood. Throughout the United States there are places where the only industry in town is the coal mine. While this Administration may think it is a “preferred alternative” to displace tens of thousands of workers, destroying coal mining will kill these one industry towns, push tens of thousands of American families into poverty, and leave our nation poorer—all reversing the original intent of SMCRA.

SMCRA was designed to promote the development fuel to help meet the energy needs of the American people while ensuring the extraction of the coal in an environmentally responsible manner.

Our abundant natural resources have made the US the richest country in the world, helped us win world wars, and raised our standard of living far above the rest of the world. Promoting increased access to those resources will continue to allow us to become less dependent on foreign sources of energy and mineral resources, create new private sector jobs and add revenue to government coffers reducing the National debt and thereby increasing our National and Economic Security.

Unfortunately, we have an Administration that sees thousands of job losses as the preferred alternative and rushes a major rulemaking by limiting public comment because their decision has already been made. This is poor policy and poor management and in the end will only make America poorer.

**STATEMENT OF THE HON. RUSH D. HOLT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. HOLT. Thank you, Mr. Chairman.

During surface mining operations in the Appalachians, known as mountaintop removal, I would remind everyone that mining companies remove rock that overlays the coal deposits and some of the removed rock cannot be returned to the mined-out area and ends up in the valleys. According to the EPA, since 1992 nearly 2,000 miles of Appalachian streams have been filled with debris from mountaintop removal activities. The EPA has found that mountaintop removal mining adversely affects aquatic life downstream and disrupts the entire ecosystem and has affected 9 out of 10 streams in the region.

Yet the previous Administration, the Bush Administration, in the final weeks of office issued a rule that loosened Reagan-era restrictions of this destructive practice, and the Bush Administration regulation was challenged in court. Now, the Obama Administration has begun the process of implementing a Stream Protection Rule, a revised rule, that we hope would better protect streams from mining waste.

The key point is we must ensure that Appalachian streams and waters are protected for the sake of the people in the region.

Now, I look forward to discussing here, and later, the reorganization that has been proposed by the Administration to consolidate OSM and BLM. But, on the issue at hand, it seems that the majority has focused on OSM's relationship with one contractor, Polu Kai Services, PKS, that was hired a year and a half ago to prepare an Environmental Impact Statement as part of revising this rule. It's worth pointing out that the Administration and the contractor ended their relationship earlier this year, ended it prematurely.

However, the documents prepared by the contractor are drafts and should be regarded as such. I think it is important that we look at the credibility of the work done by the contractor.

OSM received draft EIS chapters from the contractor over a period of months from late last year to early this year, circulated those chapters to States and government agencies for feedback, and the feedback was nothing short of devastating I thought. The draft EIS documents were regarded as incomplete and unreliable.

In reviewing the contractor's work, the Virginia Department of Mines wrote, "I certainly hope that the EIS is not going to be developed based on this inaccurate and incomplete information contained in the document."

From the Wyoming Department of Environmental Quality, "The analysis is insufficient for a document of this importance."

The West Virginia Department of Environmental Protection wrote, "The document displays very little depth of understanding of technical issues."

The Indiana Division of Reclamation wrote, "The logic [used] is not readily apparent and appears in many cases to be based upon erroneous assumptions, incorrect interpretations, and a lack of understanding of current programmatic practices from one region to another."

And it should be apparent to all listeners here that the comments were not made by States that are opponents of mining.

I hope that the majority doesn't want to use these incomplete and unreliable draft documents prepared by the contractor in an attempt to block the Administration's efforts to fix the inadequate and improper midnight regulations of the Bush Administration. They need to be fixed. The proposed rule hasn't been issued yet by OSM, and I hope that the majority will keep that in mind.

The fundamental issue that we face is that the current rule does not adequately protect streams and water quality, does not. And if we ignore this, more Appalachian streams will be buried, and the health of the region's people—and we are not just talking about snails or something in the water. This is widespread throughout the ecosystem, and it will affect—it is affecting the region's people. OSM should be encouraged to investigate the best way to address this problem.

Today's hearing I think is not quite on topic. I hope we can get to this essential issue of how we are going to protect the waters of Appalachia.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Holt follows:]

**Statement of The Honorable Rush D. Holt, Ranking Member,
Subcommittee on Energy and Mineral Resources**

During surface mining operations in the Appalachian Mountains, also known as mountaintop removal mining (MTR), mining companies remove rock that overlies the coal deposits. Some of the removed rock cannot be returned to the mined-out area, and is often placed in adjacent valleys. According to the Environmental Protection Agency, since 1992, nearly 2,000 miles of Appalachian streams have been filled with debris from mountaintop removal activities. Mountaintop removal activities have deforested an area the size of Delaware. The EPA has found that mountaintop removal mining adversely affects aquatic life downstream in nine out of every 10 streams in the region.

Yet the Bush administration, in its final weeks in office, issued a rule that loosened Reagan-era restrictions on this destructive practice. The Bush Administration regulation was challenged in court and now the Obama Administration has begun the process of implementing the Stream Protection Rule, a revised rule to better protect streams from mining waste.

We must ensure that Appalachian streams and the water quality for people in the region are protected. Unfortunately, the Republican Majority appears intent on preventing the Office of Surface Mining from making changes to this rule that would protect the public health and the environment in the Appalachian region.

In particular, the Majority has focused on OSM's relationship with a contractor, Polu Kai Services, or PKS, that was hired in April 2010 to prepare an Environmental Impact Statement as part of revising this rule. The Administration and this contractor ended their relationship in March of this year, roughly one month early. Some have alleged that OSM ended its contract with PKS early because of estimates prepared by the contractor in unfinished draft EIS documents showing that jobs could be lost.

However, the documents prepared by the contractor were just drafts. And I think it's important that we look at the credibility of the work done by the contractor.

OSM received draft EIS chapters from the contractor over a period of several months from late 2010 to early 2011, and immediately circulated those chapters—without making any changes and without attempting to verify data—to states, other government agencies, and internal experts for feedback.

That feedback from states, which has been obtained by the Democratic Minority staff, makes one thing crystal clear: The draft EIS documents were incomplete and unreliable.

In reviewing the contractor's work, the Virginia Department of Mines wrote "I certainly hope that the EIS is not going to be developed based on this inaccurate and incomplete information contained in this document."

Comments from Wyoming Department of Environmental Quality stated "The analysis is insufficient for a document of this importance."

The West Virginia Department of Environmental Protection wrote, "the document displays very little depth of understanding of technical issues."

The Indiana Division of Reclamation wrote "The logic [used] is not readily apparent and appears in many cases to be based upon erroneous assumptions, incorrect interpretations, and a lack of understanding of current programmatic practices one region to another."

These comments were not made by states that are opponents of mining.

However, the Majority is using these incomplete, and unreliable draft documents prepared by this contractor in an attempt to block the administration's efforts to fix this Bush Administration midnight regulation. In fact, a proposed rule hasn't even been issued yet by the OSM.

The fundamental issue we face is that the current rule does not adequately protect streams and water quality. If we ignore this, as the Majority would have us do, more Appalachian streams will be buried and the health of the region's people will be at risk. OSM should be encouraged to investigate the best way to address this problem. Today's hearing, unfortunately, is a distraction from that effort.

Mr. LAMBORN. All right. Thank you. We will be in recess. I note that there is only one vote in this series is so we should be able to just walk over there, vote, and walk right back. So, hopefully, in 10 or 12 minutes we can reconvene and then hear from Mr. Pizarchik and then have our questions and be done. The Committee will be in recess.

[Recess.]

Mr. LAMBORN. The Subcommittee will come back to order, and I can verify that everyone scurried both there and back and tried to make this as quick as possible.

We now have the Ranking Member with us. So, as a courtesy, I will recognize him for 5 minutes for an opening statement.

STATEMENT OF THE HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Mountaintop removal mining is one of the most environmentally destructive practices there is. Mountains are turned into barren plateaus. Streams in the bottoms of valleys are filled with debris. Heavy metals destroy water quality for nearby residents and ruin ecosystems.

Days before leaving office, the Bush Administration issued a midnight regulation revising a Reagan-era regulation called the Stream Buffer Zone. This midnight rule made it easier for mining companies to engage in this destructive practice.

The Obama Administration is now in the process of revising this rule so that we can better protect streams and the people who live next to them from the worst effects of mountaintop removal mining. And the Republican majority has derided this effort to undo a Bush Administration parting gift to the mining industry, saying that it will lead to the loss of thousands of jobs.

However, the Republican majority is making this claim based on a draft environmental analysis done by an outside contractor, Polu Kai Services. Unfortunately, as demonstrated by the comments that Mr. Holt cited, there was near universal agreement from agency experts and States where coal mining is prevalent that the work done by PKS was unreliable. The review done by this contractor was characterized by the State experts as inaccurate, incomplete, erroneous, incorrect, and insufficient. PKS even plagiarized work from other analyses that weren't even focused on coal mining and included it in its review.

In fact, PKS did not even have any previous experience conducting this sort of review. While the contractor had done previous work in construction, environmental remediation, and hazardous waste management, this was the first time PKS was responsible for preparing an Environmental Impact Statement.

But the Republican majority has taken the jobs numbers contained in this shoddy draft review done by PKS and held them up as inviolate. They are essentially taking an analysis little better than some figures scribbled on the back of an envelope about mountaintop mining and treating them as though they were carved in stone tablets brought down from a mountain. In these mining activities, we know that tons of debris come down from the mountaintop, but these numbers certainly did not.

Once again, they are trotting out their well-worn arguments that protecting public health and the environment will harm our economy. The American people know better. They know that we do not have to sacrifice our health and our environment in order to grow the economy. We can do both. When it comes to rewriting the Stream Buffer Zone Rule, it seems that what we really need is a

buffer zone from the Republican stream of opposition to any efforts to limit pollution or end giveaways to special interests.

I look forward to hearing today from the Interior's Department Office of Surface Mining on how rewriting this Bush Administration regulation can better protect not only the environment but also the economy of the Appalachian region.

In addition, I look forward to hearing more about the proposed reorganization into the Interior Department that Secretary Salazar announced last week. We need to be sure that any efforts to combine the Office of Surface Mining with the Bureau of Land Management ensure that we can still effectively regulate coal mining, ensure proper reclamation of mine sites, and provide taxpayers and States with a proper return on these minerals.

I look forward to the testimony, and Mr. Chairman, I yield back.
[The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,
Committee on Natural Resources**

Mountaintop removal mining is one of the most environmentally destructive practices there is. Mountains are turned into barren plateaus. Streams in the bottoms of valleys are filled with debris. Heavy metals destroy water quality for nearby residents and ruin ecosystems.

Days before leaving office, the Bush Administration issued a midnight regulation revising a Reagan-era regulation called the Stream Buffer Zone Rule. This midnight rule made it easier for mining companies to engage in this destructive practice.

The Obama Administration is now in the process of revising this rule so that we can better protect streams, and the people who live next to them, from the worst effects of mountaintop removal mining. And the Republican Majority has derided this effort to undo a Bush Administration parting gift to the mining industry, saying that it will lead to the loss of thousands of jobs.

However, the Republican Majority is making this claim based on a draft environmental analysis done by an outside contractor, Polu Kai Services. Unfortunately, as demonstrated by the comments that Mr. Holt cited, there was near universal agreement from agency experts in states where coal mining is prevalent that the work done by PKS was unreliable. The review done by this contractor was characterized by these state experts as "inaccurate," "incomplete," "erroneous," "incorrect," and "insufficient." PKS even plagiarized work from other analyses that weren't even focused on coal mining and included it in its review.

In fact, PKS did not even have any previous experience conducting this sort of review. While the contractor had done previous work in construction, environmental remediation, and hazardous waste management, this was the first time PKS was responsible for preparing an Environmental Impact Statement.

But the Republican Majority has taken the jobs numbers contained in this shoddy draft review done by PKS and held them up as inviolate. They are essentially taking an analysis little better than some figures scribbled on the back of an envelope about mountaintop mining and treating them as though they were carved in stone tablets brought down from a mountain. In these mining activities, we know that tons of debris come down from the mountaintop, but these numbers certainly didn't.

Once again they are trotting out their well-worn arguments that protecting public health and the environment will harm our economy. The American people know better—they know that we do not have to sacrifice our health and our environment in order to grow the economy. We can do both. When it comes to rewriting the Stream Buffer Zone Rule, it seems that what we really need is a buffer zone from the Republican stream of opposition to any efforts to limit pollution or end giveaways to special interests.

I look forward to hearing today from the Interior Department Office of Surface Mining on how rewriting this Bush Administration regulation can better protect not only the environment but also the economy of the Appalachian region.

In addition, I look forward to hearing more about the proposed reorganization of the Interior Department that Secretary Salazar announced last week. We need to be sure that any efforts to combine the Office of Surface Mining with the Bureau of Land Management ensure that we can still effectively regulate coal mining, en-

sure proper reclamation of mine sites and provide taxpayers and states with a proper return on these minerals.

I look forward to the testimony and yield back.

Mr. LAMBORN. All right. Thank you.

Before I invite the witness forward, I ask unanimous consent that the gentleman from West Virginia, Mr. McKinley, and the gentleman from Nevada, Mr. Amodei, who is a member of the Committee but not on this Subcommittee be allowed to join the members of the Subcommittee on the dais if and when they arrive and to participate in the hearing. Without objection, so ordered.

I now invite forward The Honorable Joseph Pizarchik, Director, Office of Surface Mining Reclamation and Enforcement. Your written testimony will appear in full in the hearing record. So I ask that you keep your oral statement to 5 minutes as outlined in our invitation letter to you. Our microphones are not automatic, but I know you know how to work them so I won't go through that.

Director Pizarchik, you may begin.

**STATEMENT OF THE HON. JOSEPH PIZARCHIK, DIRECTOR,
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT,
U.S. DEPARTMENT OF THE INTERIOR**

Mr. PIZARCHIK. Thank you, Mr. Chairman and members of the Committee, for the opportunity to testify on behalf of Office of Surface Mining Reclamation and Enforcement regarding the Bureau's proposed rulemaking to better protect streams from the adverse effects of coal mining. OSM looks forward to working with you on matters relating to its mission under the Surface Mining Control and Reclamation Act.

OSM derives its regulatory authority and responsibilities from SMCRA, an Act that Congress passed more than 34 years ago. Congress specified several purposes for OSM in the law. One purpose is to assure that American coal mines operate in a manner that protects people and the environment and that the land is restored to productive use. Another is to assure that coal supply essential to the Nation's energy requirements is provided, and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal. A third purpose is to provide an abandoned mine land program to address hazards to people and the environment that were created by more than 200 years of unregulated coal mining.

One thing that SMCRA is not, it is not a law to promote development of coal. It is replete with numerous references that its purpose is to protect the people and the environment from the adverse effects of coal mining.

We fully appreciate how coal production is important to the Nation's economy and energy supply. Coal mining provides good paying jobs. Coal also provides about half of this country's electricity and will remain an important part of our energy mix for the foreseeable future.

We also recognize the need to not only carry out our mandate but to do so using the best available science and technology. We are considering revising the 2008 Stream Buffer Zone Rule because there are areas that should be improved. Scientific advances not

fully explored and considered in the 2008 rule will allow us to better understand coal mining's impact on water and aquatic ecosystems. With that information, together with our on-the-ground experience gathered over the past decades, we are exploring ways to improve mining practices to prevent environmental damages before it happens. We also know that existing technological advances enable the industry to do a better job of reclaiming the land and restoring the natural resources for the benefit of the communities that remain there long after the coal is gone.

We are also considering ways to improve key regulatory provisions. SMCRA requires that the surface mining and reclamation operations be conducted to minimize disturbances to fish and wildlife and related environmental values to the extent possible using the best technology currently available. We are considering refinements that will provide solid benchmarks for companies to meet that will be based on the latest accepted science. Clear and uniform standards provide greater predictability and certainty to the industry and can better protect affected communities.

SMCRA prohibits material damage to hydrologic balance outside the permit area. That phrase has never been defined in OSM's regulations. We are considering ways to provide a clear definition that can be applied uniformly across the country. It is important to define the term in order to fully implement the law, to protect drinking water, to protect water quality and resources for recreation, wildlife, and scenic values. Protection of our waterways is a high priority as we continue to develop our coal resources.

OSM has never specified what is required for coal operators to return mine sites to approximate original contour. The Surface Mine Act requirements that operators reclaim the mined areas to closely resemble their original pre-mining shape and size. Decades of research and on-the-ground practice have demonstrated that careful restoration of post-mining areas will limit and, in many cases, eliminate the harmful levels of pollution from mines that can impact local communities and degrade downstream aquatic resources. Uniform regulations that result in carefully reclaimed areas will create opportunities for continued productive use of the land and water after coal mining ends.

We also published an Advanced Notice of Proposed Rulemaking last November. It described OSM's intent to consider whether the SMCRA regulation should be updated to require mine operators to collect more complete stream data before, during, and after mining. These data would provide a better baseline to set the standard for the successful restoration of streams after mining is completed. Data collected during mining would allow the operator to make adjustments as mining continues so that corrective measures can be implemented before material damage occurs.

The Environmental Impact Statement that OSM is developing in support of the rule will examine a range of alternatives. In addition to analyzing the significant environmental issues associated with the proposed Stream Protection Rule and its alternatives, the EIS will evaluate the economic impacts of each regulatory decision. OSM plans to produce and publish a proposed rule and associated draft EIS next year. There will be ample opportunity for additional public input on both the rule and the draft EIS.

The National Environmental Policy Act and other laws are laws that we will follow as we prepare these documents. They provide, as we move forward, that we have received extensive input to date. We have received over 50,000 comments from the public on the draft EIS, on the scoping documents, and on the Advanced Notice of Proposed Rulemaking.

Thank you for the opportunity to appear here today to testify on this development. I look forward to working with you as we work together to better protect America's streams from the adverse impact of coal mining.

[The prepared statement of Mr. Pizarchik follows:]

**Statement of Joseph G. Pizarchik, Director, Office of Surface Mining
Reclamation and Enforcement, U.S. Department of the Interior**

Mister Chairman and Members of the Committee, thank you for the invitation to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the bureau's proposed rulemaking to better protect streams from the adverse effects of coal mining. OSM looks forward to working with you on matters relating to its mission under the Surface Mining Control and Reclamation Act (SMCRA).

OSM derives its regulatory authority and responsibilities from SMCRA, an act that Congress passed more than 34 years ago. Congress specified several purposes for SMCRA. One purpose is to assure that American coal mines operate in a manner that protects people and the environment, and that the land is restored to beneficial use following mining. Another purpose is to assure that the coal supply essential to the Nation's energy requirements is provided, and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal. And a third purpose is to provide an Abandoned Mine Land program to address hazards to people and the environment that were created by more than two hundred years of unregulated coal mining that occurred before SMCRA's enactment.

We fully appreciate how important coal production is to the Nation's economy and energy supply. Coal mining provides well-paying jobs. Coal also produces about half of the Nation's electricity and will remain an important part of our energy mix for decades to come.

We also recognize the need to not only carry out our mandate, but to do so using the best available science and technology. We are considering revising the 2008 Stream Buffer Zone Rule because there are areas that should be improved. Scientific advances not fully explored and considered in the 2008 rule will allow us to better understand coal mining's impact on water and aquatic ecosystems. With that information, together with our on-the-ground experience, we are exploring ways to improve mining practices to prevent environmental damage *before* it occurs. We also know that existing technological advances enable industry to do a better job of reclaiming the land and restoring natural resources for the benefit of the communities that will remain long after the coal is gone. These goals are fully consistent with SMCRA's mandate and OSM's mission.

As we proceed with development of the Stream Protection Rule, we are considering ways to improve key regulatory provisions. SMCRA requires that surface coal mining and reclamation operations be conducted to minimize disturbances to fish, wildlife, and related environmental values "to the extent possible using the best technology currently available." We are considering revisions that will provide solid benchmarks for companies to meet, and that will be based on the latest accepted scientific methods. Clear and uniform standards provide greater predictability and certainty to the mining industry, and can better protect affected communities.

As OSM described in its Advance Notice of Proposed Rulemaking (ANPR) on the Stream Protection Rule, SMCRA prohibits "material damage to the hydrologic balance outside the permit area." This phrase has never been defined in OSM's regulations. We are considering ways to provide a clear definition that can be applied uniformly across the country. It is important to define the term in order to fully implement the law to protect water resources beyond the area covered in the mining permit; to protect drinking water; and to protect water quality and resources for recreation, wildlife, and scenic values. Protection of our waterways is a high priority as we continue to develop our important coal resources.

As the ANPR also noted, OSM has never clearly specified what is required for coal operators to return mine sites to their approximate original contour. SMCRA

requires that mine operators reclaim mined areas to closely resemble their original pre-mining shape and size. Decades of research and on-the-ground practice have demonstrated that careful restoration of post-mining areas will limit, and, in many cases, eliminate, harmful levels of pollution from mines that often impact local communities and degrade downstream aquatic resources. Uniform regulations that result in carefully reclaimed areas will create opportunities for continued productive use of the land and water after coal mining ends.

The ANPR also described OSM's intent to consider whether SMCRA regulations should be updated to require mine operators to take more extensive or more specific measurements of water quality and biology in streams before, during, and after mining. These data would better provide a baseline to set the standard for successful restoration of streams after mining is completed. Data collected during mining would allow the operator to make adjustments as mining continues, so that corrective measures can be implemented before long-term damage occurs.

As OSM proceeds with development of its proposed Stream Protection Rule, it will consider the extensive public and agency comments it has received. It will also consider the benefits, as well as the costs, of the agency's regulatory alternatives.

The Environmental Impact Statement (EIS) that OSM is developing in support of the rule will examine a range of alternatives. In addition to analyzing the significant environmental issues associated with the proposed Stream Protection Rule and its alternatives, the EIS will evaluate the economic impacts of each alternative, and will provide OSM with critical information needed to inform its regulatory decision-making and the public. OSM plans to publish a Proposed Rule and associated Draft EIS next year. OSM will take the time necessary to make informed regulatory decisions supported by the Draft EIS analysis, with ample opportunity for additional public input on both the rule and its Draft EIS.

Consistent with the National Environmental Policy Act (NEPA), the Administrative Procedure Act, and other applicable laws, we will ask interested stakeholders—whether from Congress, industry, environmental organizations, or members of the public—to read and comment on the Proposed Rule and Draft EIS once those documents have been published. We have received extensive input from the public, states, and other Federal agencies on issues that we ought to consider in drafting a proposed rule, including more than 32,000 comments in 2009 on the ANPR, and more than 20,000 after we held public scoping meetings last year. We look forward to receiving additional public review and comment on the proposed rule and Draft EIS once they are published.

Thank you for the opportunity to appear before the Committee today to testify on the development of OSM's Stream Protection Rule. Our efforts will result in regulatory improvements that will more fully carry out the bureau's mission, make use of the best available science and technology, better protect streams nationwide, and provide greater clarity and certainty to the mining industry and the affected communities. I look forward to working with you to ensure that we protect the Nation's land and water while meeting its energy needs.

Response to questions submitted for the record by the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior

Questions for the Record from Representative Johnson of Ohio

- 1. In a settlement agreement dated March 19, 2010 the Administration settled two lawsuits, one with a group of plaintiffs known as "The Coal River Plaintiffs" and another with the National Parks Conservation Association, regarding the 2008 Stream Buffer Zone Rule. In the agreement, the Administration agreed to pay the Plaintiffs in both suits the cost of litigation up until March 19, 2010 under the Endangered Species Act, the Surface Mining Control and Reclamation Act and the Equal Access to Justice Act. How much were the Plaintiffs in both suits paid as a result of this settlement agreement?**

Response: On March 19, 2010, the United States and the National Parks Conservation Association (NPCA) entered into an agreement to settle a complaint filed by NPCA under the case captioned *NPCA v. Kempthorne, et al.*, Case No. 1:09-cv-00115 (D.D.C.), which sought judicial review of the Office of Surface Mining Reclamation and Enforcement's (OSM's) 2008 Stream Buffer Zone Rule. Under a subsequent settlement agreement regarding costs of litigation, the United States paid \$48,142.40 as full settlement of all potential claims by NPCA for its costs of litigation.

On March 19, 2010, the United States and Plaintiffs Coal River Mountain Watch, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, Waterkeeper Alliance, and West Virginia Highlands Conservancy (collectively "Coal River Plaintiffs"), entered into an agreement to settle a complaint filed by the Coal River Plaintiffs under the case captioned Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212 (D.D.C.), which sought judicial review of OSM's 2008 Stream Buffer Zone Rule. Under a subsequent settlement agreement regarding costs of litigation, the Department of the Interior paid \$12,840 as full settlement of all potential claims by the Coal River Plaintiffs for their costs of litigation.

- 2. With whom and when did you, political appointees at the Department of the Interior, or OSM staff have contact with employees of the Council on Environmental Quality or any other employee in the Executive Office of the President on the Stream Buffer Zone? Furthermore, please provide any emails or phone logs you, political appointees at the Department of the Interior, or OSM senior staff have with any Executive Office of the President employee on the re-write of the 2008 Stream Buffer Zone rule.**

Response: In accordance with Executive Order 12866, the National Environmental Policy Act (NEPA) and other applicable Federal law, agencies coordinate with the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) with respect to new regulations and the analysis of such regulations under NEPA. Early coordination with these agencies promotes consistent application of applicable law, maximizes communication among agencies with similar policies or activities, and promotes a more effective regulatory program. OSM and the Department work with OMB and CEQ as appropriate on regulatory matters, including ongoing development of OSM's Stream Protection Rule. As the Department has stated previously to the Committee in both written and staff level communications, requests for information related to an ongoing rulemaking process implicate important and substantial Executive Branch confidentiality interests.

Question for the Record from Representative Flores

- 1. Were any of the OSM Employees involved in selecting Polu Kai Services, LLC also involved in selecting the 2nd contractor? Please provide to the Committee the names and roles of the OSM team in both selection processes.**

Response: On June 1, 2010, OSM awarded a contract to Polu Kai Services, LLC. In awarding this contract, OSM followed the competition requirements under section 8(a) of the Small Business Act, 15 U.S.C. 637(a), and appropriate provisions of the Federal Acquisition Regulations (FAR). OSM also followed applicable procedures for obtaining approval for the procurement action, and in rating and selecting the contractor. The Source Selection Evaluation Board (SSEB) for this selection consisted of OSM career staff, including subject matter experts and contracting personnel.

On June 17, 2011, OSM awarded a contract to Industrial Economics, Inc. In awarding this contract, OSM followed the applicable FAR procedures, which allow the agency to limit competition to eligible Federal Supply Schedule (FSS) contractors, in accordance with all applicable Department of the Interior and FAR requirements. The SSEB for this selection consisted of OSM career staff, including subject matter experts and contracting personnel.

Some, but not all of the staff who were members of the SSEB that rated the Polu Kai Services, LLC, contract, were also members of the SSEB that rated the contract for Industrial Economics, Inc.

Mr. LAMBORN. All right. Thank you. We will now begin questioning. Members are limited to 5 minutes for their questions but we may have additional rounds. I now recognize myself for 5 minutes for questions.

Based on the evidence in the record, it appears that OSM has predetermined the outcome for this rulemaking. For instance, before initiating any scoping hearings under NEPA, you wrote the entire 400-page rule. In addition, your own Federal Register notice on

June 18, 2010, said that, “we had already decided to change the rule following the change of administrations on January 20, 2009.”

Is OSM giving fair consideration to a range of reasonable alternatives to this regulation, including the no action alternative?

Mr. PIZARCHIK. Yes, we are giving fair consideration to all the alternatives, including the no action alternative. In fact, in order to comply with NEPA, it is important for us to have developed some alternatives and a potential proposal for consideration so that information can be assessed in order that we can make an informed decision as to what should be in the proposed rulemaking, and that is what we are undertaking.

Mr. LAMBORN. In the scoping documents and the Federal Register notice announcing the preparation of the EIS, you point to the court settlement agreement reached with environmentalists and the Interagency Memorandum of Understanding as reasons for the stream protection rulemaking. Nowhere do you discuss the specific on-the-ground environmental problems you are trying to address. Nor have we found any indication in OSM’s State program oversight reports any suggestion of environmental concerns necessitating this rule change.

So what is the basis for proceeding with such a comprehensive rewrite of the agency’s regulations?

Mr. PIZARCHIK. There are a number of bases, Mr. Chairman. If you look at what is actually happening in the field and look at the experiences that we have, there were things that were not considered when the 2008 rule was put together. For instance, a few years ago just up in Dunkard Creek on the Pennsylvania-West Virginia border, there was a huge fish kill which was due to high levels of total dissolved solids that was discharged from an underground mine with their treated water. That has never been taken into consideration. The emerging science out there shows that selenium that is released from some mines in the area can have a bioaccumulation and poison the aquatic community. This could have a poisoning effect on the people who eat the fish in those streams. Those are the types of things that we need to take care of.

Also, in regard to the 2008 rule, there are provisions in it that are inconsistent with the statute. For example, it provides for the codification in our regulations of the process that is referred to as valley fills. That is where the excess spoil that is blown from the top of the mountain is shoved over the side of the mountain and it wind dumps or end dumps, allowing the rocks to cascade into the valley below to fill the streams on the premise that the more durable rocks will roll farther than the dirt and the undurable rocks, to form the underdrain, the process that the industry calls shoot and shove.

Well, the statute says that that material is to be transported down and placed in a controlled fashion. There are evidences of failures where those types of uncontrolled dumping of the material over the side of the mountain has resulted in devastation downstream. We also have emerging science that shows that high levels of total dissolved solids is having an adverse effect.—

Mr. LAMBORN. OK. I see how after the fact you have come up with things, but how can the States and how can the public provide meaningful comment on the proposed rule without knowing the

specific environmental problems that the proposed change is attempting to address when they are nowhere addressed in all of the scoping documents and the Federal Register notice?

Mr. PIZARCHIK. The public will get the opportunity to review that and to provide comment on those reasons when the proposed rule is provided and published next year. It specifically provides for that information. We will have it in the preamble to the rulemaking. It will be discussed in the draft Environmental Impact Statement, and in accordance with the Federal requirements, the legal requirements, the public will have an opportunity to review and comment on those issues.

Mr. LAMBORN. OK. I may have a few more questions later. At this point, I will recognize the Ranking Member for 5 minutes.

Mr. HOLT. Thanks, Mr. Chairman. I would like to follow on the Chairman's line of questioning for a moment.

So it has been several years since the adoption of the 2008 rule. The Chairman seemed to be asking—and I think we would all like to know—what is it about the rule that you would list that isn't working? I think it is probably a pretty long list, but when you talk about the preamble and the scoping, is that where you will lay out all the reasons that there is a need for a new rule or have you already somewhere laid that out?

Mr. PIZARCHIK. The appropriate place under the current practices and the requirement is that we will lay out those reasons in the preamble of the proposed rule. They will also be laid out in detail in the draft Environmental Impact Statement that we will publish next year for public comment. There are a number of things in the 2008 rule that need to be fixed. There are also things elsewhere in our regulations that have not resulted in the full implementation of the law as Congress envisioned 34 years ago—

Mr. HOLT. Would you care to take 1 minute and just list some of the categories where the rule is failing or, well, needs replacement or reform?

Mr. PIZARCHIK. Yes. The one I mentioned earlier was about the valley fills or end dumps or shoot and shove. We need to take care of that. There are other things that we have learned, for instance, on reforestation. We know that we get less pollution off a reclaimed mine site if it has been properly reforested. The statute has always required the sites be re-vegetated with native vegetation. We have between 750,000 to 1 million acres in Appalachia alone that have not been reforested. We have provisions where the law has always required the prevention of material damage, yet we have never defined material damage. If you don't define material damage, how do you know what it is?

Mr. HOLT. That is material damage to areas outside the immediate area?

Mr. PIZARCHIK. Yes, right, and the law has always required the collection of baseline data. We have never collected or required the collection of baseline data on the aquatic community living in the stream. Seems pretty simple to a small, old farm boy like me, that if you know what is in the stream beforehand and they are living in the stream after mining, that you were successful in your mining and reclamation.

There are also geomorphic land reclamation techniques that not only can restore the land to its productive use, but can restore its form and function and do so in a way that will actually save operators money. Those things need to be updated.

I could go on but I see I am running a little out of time here.

Mr. HOLT. Thank you. Those are some significant categories, and I thank you for that.

Let me turn in the short time remaining to get a comment or two about the proposed reorganization. Perhaps you will be restrained in what you can say since it is a preliminary suggestion or well—combining OSM and BLM raises in my mind some questions. BLM, for example, has no experience in regulating mine cleanup activities on private lands. BLM hasn't been working with State agencies in the way that OSM has.

How would the proposed consolidation ensure that mines on State and private lands continue to be cleaned up effectively? Would this—it concerns me a little bit that we might lose some experience, expertise, as well as authority in those cleanups.

Mr. PIZARCHIK. Thank you. We are in the very early stages of this process. It was just announced last week. We are beginning the consultation with the employees, with the other stakeholders to provide input on that. There are some efficiencies that could be gained. OSM has experience in reclaiming the abandoned mine lands, both hard rock and coal, and out in the West where we have worked with the western operators, and that expertise, if it is integrated between OSM and BLM, could have the benefit of actually improving more reclamation in the West.

Mr. HOLT. All right. For the moment I think that is it. Thank you, Mr. Chairman.

Mr. LAMBORN. All right. Thank you. I now recognize the gentleman from Pennsylvania.

Mr. THOMPSON. Thank you, Chairman. Thank you, Director, for being here and thanks for your previous service in Pennsylvania as well.

I know one of the accomplishments that you did was you helped to coauthor the Pennsylvania Environmental Good Samaritan Act. I worked with a lot of partners, went out and saw some of those projects where different groups are able to get involved, and so I appreciate that.

Two questions. OSM has admitted spending over \$4.4 million on the Environmental Impact Study for this rule, plus an additional \$925,000 to alter the economic analysis which predicted thousands of job losses. By contrast, in 2005, several agencies managed to produce a 5,000-page programmatic EIS, including 30 Federally funded studies on all aspects of surface mining, for about the same amount.

My question is, couldn't the agency avoid the need for this merger or reorganization, or whatever word is proper to describe it, by frankly managing its existing resources more efficiently?

Mr. PIZARCHIK. I would like to be able to be in a position to have done that, but the fact is, over the last decade, our staffing levels have dropped by about 16, 17 percent due to insufficient support. If you go back about 20 years, our agency has been reduced in staff by almost 50 percent. We are doing more with less. We have been

doing that for decades, and in order to keep providing the technical support and training to the States that we are statutorily obligated to do, to do the oversight, and to do our rulemakings, we simply did not have the resources in-house to do all of that work internally, so we had to turn to the private sector for assistance.

Mr. THOMPSON. That kind of actually does kind of touch with my second question, which really has to do with primacy between the States and the Federal Government, and obviously in terms of taking primacy away from the States, and really clarification I was looking from you. In 2007 when you worked for the State of Pennsylvania you signed a letter to OSM objecting to the scope of the Stream Buffer Zone Rule saying, and this is your quote, "OSM's proposed major overhaul of its regulations which, if adopted, would force States to make major changes to their primacy program regulations and statutes to fix a problem that does not exist in those States without mountaintop mining."

So I guess the question is, why are you now advocating a comprehensive nationwide rulemaking which in your own words is much broader than the 2008 rule that contradicts your earlier position? What has changed?

Mr. PIZARCHIK. I don't agree that it contradicts my earlier position. What has changed is that what we are looking at is updating and modernizing our regulations to take advantage of the science that we now know and that has developed, to take advantage of the experience we have to more fully implement the law. And it is just as important to protect streams in Appalachia as it is in the West or the Midwest.

And SMCRA provides for and requires us to have a uniform law to provide a level playing field for mine operators in all States in order not to give a competitive advantage to one area or one region of the country over the other. So we are looking and carrying out our responsibilities to try to maintain that level playing field across the country and to modernize our regulations to more fully implement the law.

Mr. THOMPSON. Thank you, Mr. Director. Thank you, Mr. Chairman. I yield back.

Mr. LAMBORN. OK. I now recognize the gentleman from Texas.

Mr. FLORES. Thank you, Mr. Chairman. I am going to start by one comment related to the merger of BLM and OSM. First of all, I don't think there is any statutory authority. Second, it appears like the Department of the Interior is a little bit schizophrenic because on the offshore drilling side they have broken apart two agencies that were formerly combined. The regulatory function and the leasing function are split, and now with respect to coal mining, they want to merge those two functions. I wish they could figure out which direction they want to go.

My other question is, you talked about emerging science as justification for the new rule or modified rule. Can you identify for me the science that would support the rule change for coal mines that are located outside of Appalachia, in particular Wyoming, Montana, Colorado, and Utah.

Mr. PIZARCHIK. For example, in New Mexico, which is out in that area, it is not one of the ones you listed, they have been utilizing geomorphic land reclamation principles, reclaiming the land to look

like and function like it did prior to mining. As a result of that, they were able to cut down on the amount of pollution that was going into the streams. It was also successfully used in Texas. It is not being successfully used everywhere. So what we are trying to do is to modernize the regs, using that experience and the science that we have learned in those particular areas where our State partners have learned that and demonstrated these things can be successful in better protecting streams and apply that across the country as is required to do with a level playing field.

Mr. FLORES. I would like to yield the balance of my time to Mr. Johnson.

Mr. JOHNSON. Well, thank you. I appreciate my colleague yielding. You know, I was kind of dumbfounded by—first of all, Mr. Director, you might find it interesting, I am an old farm boy myself. Only I am a two-wheel wagon mule farmer. So you know, nobody is more concerned that we protect what God has given us than I am, but I am very concerned that we do it in a responsible way that incentivizes America's exceptionalism, not putting strangleholds.

One of your comments when asked—"When will the American people see and get an opportunity to see the analysis?"—your response was, "Well, they will get a chance to see it when we publish next year." That is awfully reminiscent. I mean, did the Administration and you guys hire somebody to develop that tag line? I mean, that is a rhetorical question, but that sounds awfully reminiscent of another major piece of legislation that has been destructive to America's economy and future generations when our former Speaker said, hey, let's pass this bill so we can see what is in it. That seems the way that your Administration, your Department wants to work. You want to do these things in the blind, keep America in the dark, and expect nobody to notice until it is too late. But I am glad to say that we are not going to wait and it is not going to be too late.

So let me get into my questions. As you might be aware, as the Chairman mentioned, we had a field hearing in West Virginia earlier, and I had the opportunity to question three State regulators about what their experiences have been with OSM in this rulemaking process as compared to the rulemaking process that resulted in 2008. The State regulators have all expressed that they had the same experiences this time around and that it was not pretty.

I must say that I am highly disappointed with OSM and the way that they have treated the States in this rulemaking process. Specifically, Director Clarke of the West Virginia Division of Mining and Reclamation, said that, and I am quoting him, he thinks OSM seems to want to complete this rulemaking process at a world record pace, which is unrealistic considering the other one took 5 years to complete.

Director Pizarchik, what is your response to his claim—Director Clarke's claim that OSM has set an unrealistic time frame to complete this rulemaking process?

Mr. PIZARCHIK. The process that we are using, that we engaged on, has had more public involvement, more public input than was used on the 2008 rule. We have already received more public com-

ments than were received on that entire rulemaking. We haven't even gotten to the proposed stage yet.

As far as moving forward with this, yes, we were trying to get this rule done in a timely fashion, and the States, notwithstanding their protestations to the contrary, had provided almost 200 pages of comments, hundreds and hundreds of comments, many of which were cited earlier.

Mr. JOHNSON. Mr. Chairman, my time has expired here. I will come back to these questions on another round, but you know, talking about hundreds of pages, the prior rulemaking process had tens of thousands of pages of analysis and comments. So I will comment on it in a minute. Mr. Chairman, I yield back.

Mr. LAMBORN. Thank you. The gentleman from South Carolina.

Mr. DUNCAN. Thank you, Mr. Chairman. Just real quickly, we have had numerous hearings where folks from the Department of the Interior have been here and we have seen this constant merger and changes within the Department which seems to me they are consolidating power. That is just how I am going to leave it. I am concerned about the specific efficiencies that they are trying to attempt and this merger is trying to attempt. I am also concerned about employees losing their jobs through this merger. I am not going to ask any specific questions.

I am going to allow the gentleman from Ohio to continue his line of talk, and I yield the balance of my time to him.

Mr. JOHNSON. I thank the gentleman for yielding.

Going back to the line of questioning that we had before I finished, the Ranking Member said that the 2008 rulemaking was a midnight rewrite, a rollback, if you will, which in fact it was a 5-year process. You are claiming now hundreds of pages of public testimony when the prior rulemaking process had thousands and thousands of pages of public comment. Clearly, if they think that the 2008 rulemaking process was a midnight rule, then my gosh this must be somewhere between coffee and breakfast rulemaking that you guys are doing because it is proceeding at breakneck speed.

Specifically, I would like to know from you, how was the 2008 rule a rollback? First of all, do you think it is a rollback, and—do you think it is?

Mr. PIZARCHIK. We are engaged in our third year as far as this rulemaking—

Mr. JOHNSON. Is the 2008 rule a rollback?

Mr. PIZARCHIK. There are folks who have the belief that if you look at the—

Mr. JOHNSON. What do you believe? I am asking you. Is the 2008 rule a rollback?

Mr. PIZARCHIK. The 1983 rule was replaced which provided a 100-foot buffer to stream—

Mr. JOHNSON. Is the 2008 rule a rollback, Mr. Pizarchik? Yes or no? Let me ask it another way. Maybe you can answer it this way. What can an operator do under the 2008 rule that you disagree with that he couldn't do under the Reagan-era rule?

Mr. PIZARCHIK. He can bury streams with excess spoil pursuant to the law or pursuant to the regulation. That was not allowed under the—

Mr. JOHNSON. But you testified earlier that there are laws in place already that restrict those kinds of things. So aren't you talking about maybe an operator rather than a regulatory action?

Mr. PIZARCHIK. No. What I am talking about is appropriate and proper implementation of the statute.

Mr. JOHNSON. OK. All right. You know, let me ask you a question about what led into this rewrite. This rewrite stemmed from a lawsuit, right?

Mr. PIZARCHIK. Not entirely, no.

Mr. JOHNSON. OK.

Mr. PIZARCHIK. It stemmed from, if I may—

Mr. JOHNSON. Why did not OSM and the Department fight the lawsuit and try to uphold the 2008 law that was in place?

Mr. PIZARCHIK. There were two lawsuits on that. The Department had admitted errors in the rulemaking. We had a choice of trying to defend a rule that we admitted that there were errors in that rulemaking process, and we thought it was in the best interests of the American public to go forward with revising the regulation to modernize it. We have sought input from the public and an Advanced Notice of Proposed Rulemaking in 2009—

Mr. JOHNSON. Let me ask you this, did the environmentalist group that brought the lawsuit have their legal fees repaid after the settlement?

Mr. PIZARCHIK. I have no idea, Mr. Congressman.

Mr. JOHNSON. Do you know how much the settlement on that lawsuit cost the American taxpayers?

Mr. PIZARCHIK. I do not.

Mr. JOHNSON. OK. Well, if you don't know, you know, I suggest that you should know. Do you think you can find out?

Mr. PIZARCHIK. I believe that we could find out, and we can provide that—

[The response to Mr. Johnson can be found on page 12.]

Mr. JOHNSON. I would like you to find out if the environmentalist group that brought that suit had their legal fees repaid by the American taxpayer, and if so, how much.

Is it safe to say that OSM and the Department were not upset to be sued by the environmentalists because it gave OSM more credibility to legally reopen the 2008 rulemaking process?

Mr. PIZARCHIK. I don't know that I could—

Mr. JOHNSON. Did that lawsuit bother you that you were sued?

Mr. PIZARCHIK. That lawsuit was well on its way before I even got here on the job, and part of my job was figuring out how the best to proceed with that, and in my judgment it was best to proceed to put that lawsuit on hold and spend our resources on improving the regulations to modernize the science and the experience we have.

Mr. JOHNSON. Mr. Chairman, I yield back and hopefully we have additional rounds.

Mr. LAMBORN. OK. Thank you. We will have a second round right now, and I will go ahead and recognize myself for 5 minutes.

Mr. Pizarchik, if OSM is giving fair consideration to all alternatives, and we talked earlier about there is a 400-page rule already written by OSM, has each alternative received equal treat-

ment where they have received a 400-page writing for each of the alternatives?

Mr. PIZARCHIK. We are still in the process of developing the proposed rule. We do not yet have a proposed rule. All of the alternatives are getting a fair evaluation, both on the environmental impacts and the costs and benefits of that. That information in accordance with NEPA I will be using to helping inform me to make an informed decision as to what should be in the proposed rule-making.

Another point, a number of the changes that we are looking at is a matter of carrying out some of the Executive orders where we are looking to modernize our regulations to improve clarity to remove redundant provisions or outdated provisions. So there is a significant portion of what we anticipate being in the proposed rulemaking that will better improve the quality of those regulations.

Mr. LAMBORN. Well, the part I am concerned about is the part that will kill jobs and stop coal mining. So when you look at the EIS, will it look at the impacts to manufacturing and service industry and the electrical generation industry if we have to switch to an alternative and/or higher cost fuel when the production of coal is curtailed through the Stream Buffer Zone Rule?

Mr. PIZARCHIK. First off, I am not an expert on the economics. That is why we have hired outside experts to do the analysis. I am not familiar with the intimate details of what the analysis is going through. I am confident that our contractor will look at what all of the requirements are under the Federal law in order to come up with a NEPA-compliant cost-benefit analysis and draft Environmental Impact Statement for us. So, all of that information will be—whatever is appropriate under the law will be considered and evaluated for the various options, and this is not a job-killing rule-making. The numbers which you refer to were numbers that the contractor put together. Those numbers were fabricated based on placeholder numbers and have no basis in fact.

Mr. LAMBORN. So has there been a second contractor who has come up with different numbers or you just don't believe what the first contractor came up with without any real evidence?

Mr. PIZARCHIK. The numbers that the first contractor came up with were based on no evidence. They have no basis in fact. The current contractor that we have hired to complete the economic benefits and costs of the rulemaking is still in the process of preparing that. I don't have that information. That information will be used to help inform—

Mr. LAMBORN. Well, I certainly look forward to hearing that. I think common sense would tell me, an old farm boy also from Kansas, that if you stop the production of coal mining because the rules for extracting it are more stringent, you are going to have less coal, and therefore you will have less coal mining. Therefore, you will have fewer jobs mining coal. So I don't know what the number is. I just know there is going to be a number. I hope it is an accurate number.

And on that point, will the EIS take into account the loss of jobs? I asked about the higher cost of coal. Will it take into account the loss of jobs?

Mr. PIZARCHIK. Again, I believe that the NEPA requirements will be fulfilled by this contractor taking into consideration all of the environmental benefits and costs of not only the preferred alternative but the other alternatives, including the no action alternative. So we expect to have all of that information to be used for helping to make my decision on that, and then once I make the decision, we get out what is in the proposed rule, you all, the public, the industry, the citizens, the environmentalists will all have their opportunity to look at that information and provide their input on it. The State regulators will have that input. It is the way the process is supposed to work.

Mr. LAMBORN. OK. And to be real specific, on the economic analysis will we also see what will be lost to States and the Federal Government, the loss of severance taxes, for instance, directly costing governments revenue, and will we see the indirect costs? When you have fewer jobs, that is fewer people paying taxes.

Mr. PIZARCHIK. Again, Mr. Chairman, I am not familiar with all of the intimate details of what is required to be in the environmental analysis required by the National Environmental Policy Act, but you have to remember that the Surface Mining Act never contemplated that every ton of coal could be mined regardless of the environmental impact. It is a balancing act between helping meet our country's energy needs and protecting the people and the environment from adverse effects of mining.

Coal is not in short supply. We are exporting coal in this country out of the ports in the South, the ports in the East. There are even proposals to build a new port in the West to export coal. We have the coal production to meet our needs and saying that rulemaking and the regulations is going to cost jobs, that isn't any more true today than it was 40 years ago when the Surface Mining Act was passed and the regulations were passed.

What we have is better protection of the environment, better protection of the people, balanced with meeting our country's energy needs, and we will continue to do that. That was part of what my job is, to make sure we have that balance.

Mr. LAMBORN. OK. Well, I hope that that is what happens. I now recognize the Ranking Member for 5 minutes.

Mr. HOLT. Thanks. Director Pizarchik, following along these lines, after PKS Services completed its draft analysis, it was forwarded for review. Isn't it true that Mr. Bradley Lambert, Deputy Director of Virginia Department of Mines, submitted comments that contain—stating that the information contained in the documents prepared by PKS was, “inaccurate and incomplete”?

Mr. PIZARCHIK. Yes.

Mr. HOLT. Isn't it true that Kathy Ogle, a hydrologist at the Wyoming Department of Environmental Quality, wrote of the PKS work, “the analysis is insufficient for a document of this importance”?

Mr. PIZARCHIK. Yes.

Mr. HOLT. Isn't it true that Thomas Clarke of the West Virginia Department of Environmental Protection submitted comments stating that PKS document displays very little depth of understanding of technical issues; that Mr. Bruce Stevens, Director of the Indiana Division of Reclamation, on the PKS analysis wrote that “the logic

used is not readily apparent and appears in many cases to be based upon erroneous assumptions, incorrect interpretations, and a lack of understanding of current programmatic practices"; and David Lane, a civil engineer within the OSM office, wrote "the writers seem to have little knowledge of Appalachian mining practices and overall surface mining practices and this should be rewritten by professional engineers, geologists, and regulatory experts with a working knowledge of the subject matter"?

Mr. PIZARCHIK. I believe those are all true.

Mr. HOLT. Would you agree then that with the near universal assessment, not only by OSM experts but also by experts of the State agencies where coal mining is widespread and strongly supported, that the work done by this contractor, PKS, was incomplete and inaccurate and that there are lots of reasons to take their draft work with a grain of salt or a grain of sand or a grain of coal or perhaps many grains?

Mr. PIZARCHIK. Yes, I would agree with that.

Mr. HOLT. And so should we place any more credence in their job impact numbers than we do in their interpretations, assumptions, and conclusions about mining practices and other things that have been declared to be without basis?

Mr. PIZARCHIK. No.

Mr. HOLT. So I do want to make that point. Of course, we are interested in jobs, but you know, let's have a debate based on the facts, and I hope that we will have contractors working on documents based on the facts.

Back to this proposed reorganization. I understand and you were clear that the details of the consolidation of OSM and the Bureau of Land Management are not firm and there is much that you can't yet discuss. But can you assure this Committee that the reorganization will not harm the regulation of mining activities on public, State, and private lands and harm the public interest in that?

Mr. PIZARCHIK. Perhaps the best way I can do that is to read something that Secretary Salazar said to the OSM and BLM employees when he made his announcement last week. He says, "The second thing that I want to make sure is understood here is that OSM is a separate and independent entity. It is by law. It is so under SMCRA and as so it will remain. With a Director who is a Presidentially appointed, Senate confirmed person, I recognize the independence of OSM under the statute and the function that it carries on. So I don't want anybody to walk away from here thinking that what we are doing is somehow minimizing the future of OSM. We are not doing that. It will remain an independent agency."

And there are also experts within OSM that it is believed that our expertise in dealing with reclamation can actually help and improve the reclamation.

Mr. HOLT. Well, that is the kind of assurance that I am looking for from you, that this will not harm and, if possible, will improve our ability to properly clean up mines, to reclaim lands, Federal, State, and private, and that revenue collection will not be harmed in any way.

Mr. PIZARCHIK. And from the standpoint of—well, what we are trying to prove, as a small agency, it is difficult for us to compete,

and the Secretary's belief is that we will be able to compete better in these difficult budgetary times in order to have the resources to prevent further erosion of OSM's core function.

Mr. HOLT. Well, I will take that as a reassurance, and I thank the witness. I thank you, Mr. Director.

Mr. LAMBORN. OK. I now recognize the gentleman from Texas.

Mr. FLORES. Thank you, Mr. Chairman. Funny, listening about all these farm boys. I am a former ranch hand from Texas so I guess I am related but slightly dissimilar.

One of the messages I would like for you to take back with you is that the Department of the Interior has no statutory authority to merge these functions, and so it sounds like you are going to try to keep them separate, and I hope that is actually the case.

Ranking Member Markey and Ranking Member Holt have had quite a dialogue with you talking about PKS and saying that they lack the experience for conducting this analysis. I think that is essentially what you have agreed with. Is that the case?

Mr. PIZARCHIK. Based on our experience with the work that they produced, yes.

Mr. FLORES. OK. That raises the next question. Why were they hired in the first place?

Mr. PIZARCHIK. We used a competitive hiring process. They represented themselves as NEPA experts. With the representations, it appeared to be the case. They indicated they also had qualified subcontractors who had done work both in the environmental community and in the mining community. At that time, the team that evaluated them had determined they met the requirements for their demonstration, that they appeared to be a contractor who was qualified to perform this work.

Mr. FLORES. An OSM team made the evaluation, is that correct, and did the due diligence?

Mr. PIZARCHIK. That is my understanding, yes.

Mr. FLORES. OK. Didn't do a very good job, I guess, did they?

Mr. PIZARCHIK. 20/20 hindsight, I would have—we all expected better results.

Mr. FLORES. OK. And then what I understand, who do you think made the mistakes in the PKS work? Is it PKS or the subcontractors?

Mr. PIZARCHIK. I guess from the standpoint of looking back, I am not in a position to go into the intimate details of the other things. The fact is that when we had our concerns we shared them with PKS with a notice of cure, giving them the opportunity to cure the problems with the products that they were supposed to deliver. They provided their response and they indicated that they acknowledged what they provided was incomplete on that, and from the standpoint of looking at the aspects of it, I think there was probably some things where that complicated things, and we reached the end that we all concluded, that PKS and the Department concluded that it was in the best interest of both parties to end the contracting relationship. We ended it 2 months early from when it was set to expire. We had an option to renew that we elected not to renew, and so from all the things considered, we just thought it was in the best interest of everybody to go forward.

Mr. FLORES. From what I understand, the OSM picked the sub-contractors that PKS was supposed to use; is that correct?

Mr. PIZARCHIK. Not to my knowledge.

Mr. FLORES. OK. The team that hired PKS, did you use the same team to hire the replacement contractor?

Mr. PIZARCHIK. I don't recall the exact composition.

Mr. FLORES. Would you get that back to us, please? That would be pretty interesting because if I can't trust your judgment on the first contractor, even though OSM appointed the subcontractors to get this result, how are we to trust, if particularly the same team is used, how are we to trust the judgment going forward? That is troubling to me.

[The response to Mr. Flores can be found on page 13.]

Mr. FLORES. One last question. You know, the first analysis, I mean you said it was flawed. It did point out job losses that were pretty extensive. In your rulemaking, what level of job losses is acceptable?

Mr. PIZARCHIK. Under the National Environmental Policy Act, we are required to look at the cost and the benefits of it, and it is a balancing of those parts. So this is a rulemaking that we need to look at all of those factors and take that all into consideration. I don't know that there is a magic number one way or the other. We believe that there are going to be significant environmental benefits out of this rulemaking, and our job is to strike that appropriate balance and that is what we intend to do, once we get the information that allows us to make the informed decision.

Mr. FLORES. I think most economists would say if coal prices rise substantially as a result then you have higher energy prices; high energy prices result in lower economic activity; lower economic activity results in fewer Americans employed. Are you going to look at this analysis on a macro basis like that, like the real world does?

Mr. PIZARCHIK. Again, the analysis that is being prepared by the contractor is what is required under the National Environmental Policy Act. I am not prepared today to tell you that I am an expert on this and that I know all the ins and outs of those details. I do not.

Mr. FLORES. Well, I hope it is a different team that picked the contractor than picked the last one. Thank you.

Mr. LAMBORN. OK. As we begin to wrap up, I recognize the gentleman from Ohio.

Mr. JOHNSON. Thank you, Mr. Chairman. I want to get back to the contractor, the contractor that was fired. Did any official at OSM or the Interior or any part of the Administration ask that contractor to change the assumptions for the economic analysis which would then lower the jobs impacts of their analysis?

Mr. PIZARCHIK. Well, first of all, the contractor was not fired. As regarding any official, anybody in the management level, I don't believe that occurred.

Mr. JOHNSON. Remember your last testimony when you testified, it was a mutual agreement between your Department and the contractor that the contractor had not produced results, correct?

Mr. PIZARCHIK. What I testified, and I believe, is that the contractor and us agreed that it was in the mutual interest of both parties—

Mr. JOHNSON. Because they did not produce the results that you were looking for.

Mr. PIZARCHIK. Because, yes, the contract requires them to provide a NEPA-compliant document—

Mr. JOHNSON. OK. In your earlier testimony today, you claimed that there was no basis in fact for their conclusions. Then you turn around and say that you are not an expert. So who made the determination that there was no basis for that contractor's determinations?

Mr. PIZARCHIK. Congressman, I think everyone would agree that if you use placeholder numbers that have no basis in fact or anything and you plug that into a formula to come up with job numbers that those job numbers—

Mr. JOHNSON. Did you make that determination as a nonexpert or did you get an outside independent agency to look at that contractor's results? You are not the expert; you said so, right?

Mr. PIZARCHIK. I said I am not an expert on the NEPA requirements—

Mr. JOHNSON. OK. It is amazing to me that we sit and listen to my colleague from Massachusetts talk about how dismal of a performance this contractor did, and yet he wasn't fired. Was he paid?

Mr. PIZARCHIK. He was paid for the—as I mentioned earlier—he was on a time and material basis—

Mr. JOHNSON. How much was the contractor paid?

Mr. PIZARCHIK. The contractor was paid \$3.7 million.

Mr. JOHNSON. \$3.7 million, my goodness. Wow. Wow. Have you heard many of the President's speeches these days as he is out campaigning across the country? You talked about this rulemaking is going to give or this rulemaking change is going to give us environmental benefits. Have you heard the President talking about his campaign? Does he have an environmental benefits bill before the Senate and the House or is he focused on creating jobs according to him?

Mr. PIZARCHIK. I have not been listening to—

Mr. JOHNSON. The focus is on creating jobs, right?

Mr. PIZARCHIK. Yes, and—

Mr. JOHNSON. OK. Let me ask you this. Is it safe to say, Mr. Director, that if you further restrict coal mining activity with an irresponsible rewrite of a rule that is already in place and you further restrict coal mining activity, that is going to cost America jobs, right, and reduce coal production?

Mr. PIZARCHIK. That is not safe to say.

Mr. JOHNSON. It is not? How can you come to that conclusion?

Mr. PIZARCHIK. Because if you look at the history of the rulemaking, we have to strike that balance. If you have to take more sampling of the streams to get the baseline data, you are going to need more people to do that. It takes more people to haul that excess spoil from the top of the mountain to place it in the valley below—

Mr. JOHNSON. It takes more people to enforce your rule than it does to mine coal, for crying out loud.

Mr. PIZARCHIK. That is not true.

Mr. JOHNSON. You know, I don't think you guys have the memo about what your President, our President, said in his State of the

Union. He said let's create jobs, let's have regulatory reform. Instead of regulatory reform, what we get from the Department of the Interior and the Department of Office Surface Mining and Reclamation is further overreach.

Mr. PIZARCHIK. We don't even have—

Mr. JOHNSON. Let me ask you a question, the last time you testified before this Committee, I asked you if you had any contact with the Executive Office of the President on this issue. Do you recall that line of question?

Mr. PIZARCHIK. Vaguely, yes.

Mr. JOHNSON. At first you replied no but then after the questioning portion of the hearing was over, a member of your staff pointed out to you that the Council on Environmental Quality is a part of the Executive Office of the President, right?

Mr. PIZARCHIK. That is correct.

Mr. JOHNSON. OK. And that, therefore, you have had contact with the Executive Office of the President. Briefly with whom and approximately when did you have contact with the staff or the Counsel on Environmental Quality or other Executive Office of the President about this particular issue?

Mr. PIZARCHIK. Well, first, I am not knowledgeable with who all is in the Office of the White House as you said—

Mr. JOHNSON. There is expertise lacking all across the board in your Department, isn't there?

Mr. PIZARCHIK. Can you name everyone?

Mr. JOHNSON. I am asking you the question. When did you talk to the President's staff?

Mr. PIZARCHIK. The folks who I have talked to are on the list of documents we provided where we shared copies of some of the documents with them, and I provided briefing to a couple of staff members on I think OMB or NCEQ.

Mr. LAMBORN. If the gentleman could suspend for a moment, it has come to my attention that earlier I neglected to give the gentleman from Ohio his own 5 minutes because others had yielded to him and I assumed that that was his time. So to even everything out, you have an additional 5 minutes, and you can use all or part of it and then we will be finished.

Mr. JOHNSON. Thank you. I appreciate it. I am sure the Director appreciates it as well. Let's continue.

So you have provided this Committee with a record of your communications with the Executive Office of the President?

Mr. PIZARCHIK. We have provided a response to a request that we have received from this Committee and from Chairman Hastings on that, and I don't recall exactly what is all in that, but we have provided answers to those questions. There are still some more documents that are being reviewed through the process that will be provided as soon as we can complete the review.

Mr. JOHNSON. OK. I want to get into the merger a little bit. I asked some questions yesterday of your potential future boss Mr. Abbey, and I was not impressed with the answers that I received. Perhaps maybe you have a different slant on this since the two of you may have had a chance to talk. Maybe you can shed some light on it. How is this merger allowed to take place when SMCRA, the law, clearly prohibits the merger of the two agencies?

Mr. PIZARCHIK. I believe the provision in SMCRA you are referencing is the one prohibiting OSM from having impact or any connection with an agency that develops coal; is that correct?

Mr. JOHNSON. That is correct.

Mr. PIZARCHIK. All right. We are in early stages of evaluating this, and as the Secretary indicated—

Mr. JOHNSON. Is it a proposed merger or is it a decision that has already been made?

Mr. PIZARCHIK. The Secretary announced his Secretarial Order last week. The Secretarial Order provides for consultation over this month, and it provides for it to take effect on December 1, and then we are to prepare.

Mr. JOHNSON. So it is not a proposed merger. The Secretary has announced that it is a merger, correct?

Mr. PIZARCHIK. The Secretary's order is quite clear on it, and that we are going to be engaging in consultation with the employees—

Mr. JOHNSON. On how to implement the merger?

Mr. PIZARCHIK.—with Members of Congress and all that information will be used to help develop a plan and a schedule.

Mr. JOHNSON. A plan and schedule on how to implement?

Mr. PIZARCHIK. We have to—I guess we have to get that input—

Mr. JOHNSON. When do—

Mr. PIZARCHIK.—how this consolidation is to—

Mr. JOHNSON. When does the Secretary plan to come before Congress, perhaps this Committee, and talk about the law that is in place that would prohibit that merger?

Mr. PIZARCHIK. I can't answer that but the statutory provisions under which this is looked at, we are going to be working with our solicitors and looking very carefully at what would be allowed under the law and what would not be allowed under the law. We intend to do this within the full bounds of the law without seeking legislative amendment.

Mr. JOHNSON. Mr. Director, I have to tell you that this whole process is very concerning to me. We have job numbers today. In the last 4 months we created less jobs in the month of October than we did over the previous 4 months, any of the 4 months, unemployment still at 9 percent, and yet your Department, this Administration continues down this road of job-killing regulatory policies. It is mind boggling to me that you can't, number one, admit that and, number two, stop that.

Ohio gets 87 percent of its energy from coal, and I can tell you that should this Stream Buffer Zone Rule go through—and I am going to continue to fight with all I have to make sure that it doesn't happen—it is going to hurt a lot of people in eastern and southeastern Ohio. And so I dare say, as long as you are in your job, you and I are going to be spending a lot of time over the next little while.

So, with that, I would like to yield some time to my colleague from Texas.

Mr. FLORES. Well, Mr. Director, thank you for appearing today. Since the Secretary's order said that he was going to be seeking congressional input, I want to go ahead and give you my input and

let you know I think that you need to report back to him that at least this Congressperson thinks that he has no statutory authority to merge these agencies.

Thank you.

Mr. HOLT. Would the gentleman yield to me for a couple of seconds?

Mr. FLORES. It is Mr. Johnson's time, I believe.

Mr. JOHNSON. You have one second. Mr. Chairman, it is up to you.

Mr. HOLT. May I unanimous consent for 15 seconds?

Mr. LAMBORN. Please be brief.

Mr. HOLT. Thank you.

I just wanted to reassure Mr. Johnson that there is nothing nefarious or conspiratorial or clandestine about conversations with Council on Environmental Quality. An agency should go to the Council on Environmental Quality. That is the organization that coordinates administrative actions with respect to the—

Mr. JOHNSON. Would the gentleman yield?

Absolutely. What I am trying to determine here is if they went, and when they went, and if they've let the President of the United States, who is out campaigning the country, talking about creating jobs, if they've let him know what they are about to do to the coal industry and jobs across eastern and southeastern Ohio.

Mr. LAMBORN. OK. We are going to wrap up now. This has been an invigorating discussion. I appreciate the Director being here, taking all the questions and supplying his testimony.

Members of the Committee may have additional questions for the record. I would ask that you respond to these in writing.

But finally, I need to say, on February 8, Chairman Hastings and I sent the OSM Director, Mr. Pizarchik, a letter requesting documents surrounding the dismissal of Polu Kai. It is now 10 months later and while some documents have been produced, the Committee is still waiting on documents that we requested then.

This Committee has a constitutional duty to conduct private oversight of the Executive branch, and we are unable to perform that duty if the Administration does not comply with our request.

Republicans have committed to running an open and honest House of Representatives, and we expect the same out of an Administration that President Obama has referred to in the same manner.

That being said, Director Pizarchik, I hope that we can get an assurance from you today that the balance of the documents that we requested will be promptly delivered to the Committee.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 12:36 p.m., the Subcommittee was adjourned.]