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EXAMINING THE STREAM PROTECTION RULE

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
THE INTERIOR

AND THE

SUBCOMMITTEE ON HEALTH CARE,
BENEFITS AND ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
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EXAMINING THE STREAM PROTECTION RULE

Tuesday, December 8, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE INTERIOR, JOINT WITH THE
SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND
ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 2:32 p.m., in Room 2154, Rayburn House Office Building, Hon. Cynthia M. Lummis [chairman of the Subcommittee on the Interior] presiding.

Present from the Subcommittee on the Interior: Representatives Lummis, Gosar, Buck, Palmer, Lawrence, Cartwright, and Plaskett.

Present from the Subcommittee on Health Care, Benefits, and Administrative Rules: Representatives Jordan, Walberg, Lummis, Meadows, Mulvaney, Hice, Carter, Cartwright, Norton, and Lujan Grisham.

Also Present: Representative Johnson of Ohio.

Mrs. LUMMIS. Well, we are going to start. There is a series of procedural votes that were unanticipated that are going on on the floor of the House this afternoon. We've decided not to let them interfere with our hearing, so I'm going to gavel in.

I would ask members to take turns leaving and coming back. If you can't come back because you have a markup in another committee, please let us know so we don't drain ourselves of attendees.

And we will now begin. So thank you for joining Chairman Jordan and me for this joint hearing by the Subcommittee on Interior and the Subcommittee on Health Care, Benefits, and Administrative Rules. Today, we'll review the Department of the Interior's Office of Surface Mining proposed stream protection rule.

The proposed rule was published in the Federal Register in July following years of back-and-forth following a previous version of the rule that was finalized in 2008 and which was struck down by the courts. To date, the administration has spent several million dollars to revise regulations under the Surface Mining Control and Reclamation Act that govern coal mining.

The proposed regulations originally were to reduce the harmful environmental consequences of surface coal mining operations in Appalachia. Since then, they have been expanded in scope to include operations nationwide in both surface and underground coal mining.

OSM entered into memorandums of understanding with multiple States in 2010 to become cooperating State agencies in preparing

a draft environmental impact statement under the NEPA process for the proposed rule.

OSM allowed reviews of those proposed documents in 2010 and then shut out the States—this in spite of a public guarantee by then-Interior Secretary Salazar that all States would have an opportunity to review and comment before the draft EIS was published. My home State of Wyoming was one of the few States that did not throw up their hands in response to the way they were being treated.

This failure calls into question whether OSM properly followed administrative procedures in drafting the rule. Further questions have been raised regarding the regulatory analysis underpinning the rule.

J. Steven Gardner, president of the Society for Mining Metallurgy and Exploration, was part of a team put together by OSM to write the environmental impact statement and the regulatory impact analysis. When his team predicted thousands of job losses as the impact of the proposed rule in 2010, he states OSM pressured his team to change the numbers. When he refused, his contract was terminated.

A subsequent RIA produced this year for OSM found less than 300 jobs lost and with those mostly offset by jobs related to compliance with the proposed rule, while an assessment produced by the National Mining Association predicted between 55,000 and 79,000 coal mining jobs lost. That's quite a range.

The Assistant Secretary for Land and Minerals Management, Janice Schneider, is before the committee.

And I appreciate your willingness to work with us, as we've had to repeatedly reschedule this hearing. And today we're going to have some interruptions, so I am grateful that you are here and willing to tolerate some of these interruptions. I really do look forward to hearing from you and the other members as we try to clarify what's going on here.

We are in order. We now will recognize the ranking member.

And I will let you know that, without objection, the chair is authorized to declare a recess at any time, although we hope to rotate in and out as these procedural votes continue.

The chair now recognizes the ranking member, Mrs. Lawrence.

Mrs. LAWRENCE. Thank you, Madam Chairwoman. And thank you so much for holding this hearing.

The proposed stream protection rule was drafted to preserve clean water and a healthy environment. This new rule is necessary because existing rules do not offer enough protection to communities from the pollution and long-term environmental damage caused by the coal mining waste.

Mountaintop removal mining has caused serious and permanent harm to the environment. Hundreds of miles of streams have been destroyed by mine waste. Toxic chemicals from mine waste harm fish and other aquatic life. Humans and animals that consume fish from streams contaminated by mine waste are also harmed. Recent scientific studies have strongly associated high disease and mortality rates for residents in nearby communities with the harmful effects of mining practices.

Current rules to protect streams from the harmful effects of mountaintop removal mining are over 30 years old. These rules were not developed with the science we have available today and have not prevented serious or persistent environmental harm.

The new rule will accomplish a number of objectives, including increasing the monitoring of water quality during mining operations and afterwards, requiring mine operators to restore streams damaged by mining practices, and requiring financial assurance that long-term pollution discharges will be treated.

This last point is important because current rules do not address this huge problem. Mining companies have simply walked away from the pollution they created without any financial liability to clean up the mess.

Opponents of this commonsense rule express concerns about loss of jobs and other economic impacts. But, according to experts and testimony received today, the new rule will create as many jobs as those that are numbered lost. The net effect on jobs will be zero.

The importance of clean water cannot be overstated. The survival of our planet depends on water—and I will say clean water. I wholly support the stream protection rule as one of the measures to maintain clean water and protect our environment.

I want to thank you so much, Ms. Schneider, for participating today and providing information about this matter.

Thank you, Madam Chair, and I yield back my time.

Mrs. LUMMIS. I thank the gentlelady.

The chair now recognizes Mr. Jordan, chairman of the Subcommittee on Health Care, Benefits, and Administrative Rules.

Mr. JORDAN. I thank the chairman for having this important hearing. I would yield back in an effort to get to Ms. Schneider's testimony so we can go vote and then come back and ask questions, if that's okay with the chair.

Mrs. LUMMIS. Thank you, Mr. Chairman.

And, Mr. Cartwright, the ranking member of the Subcommittee on Health Care, Benefits, and Administrative Rules, will be recognized if he is able to attend the meeting this afternoon.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

Mrs. LUMMIS. And we will now recognize our distinguished witness. I'm pleased to welcome Ms. Janet Schneider, Assistant Secretary for Lands and Mineral Management at the U.S. Department of the Interior.

Welcome, Ms. Schneider.

Pursuant to committee rules, witnesses are sworn in before they testify, so please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record reflect that the witness answered in the affirmative.

Thank you. Please be seated.

In order to allow time for discussion and questions, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record.

You may begin. You are recognized for 5 minutes.

STATEMENT OF THE HON. JANICE SCHNEIDER

Ms. SCHNEIDER. Thank you very much.

Chairman Lummis, Chairman Jordan, and members of subcommittees, thank you for the opportunity to testify on the proposed stream protection rule.

The proposed stream protection rule includes reasonable and straightforward reforms to revise 30-year-old regulations for coal mining. The proposed rule recognizes, as the Energy Information Administration does in its forecast, that coal mining and coal-fired electricity production will be a part of our energy mix for decades to come. And so the proposed rule is designed to keep pace with current science, technology, and modern mining practices while also safeguarding communities from the long-term effects of pollution and environmental degradation that endanger public health and undermine future economic opportunities.

Every reclamation practice contained in the proposed rule has been successfully implemented by a mine operator somewhere in the country. Through this proposed rule, we are leveraging innovations of the industry by adopting best practices developed over the last 30 years to improve the regulations.

I would like to stress that this is a proposed rule. It has been available for public review and comment for close to 3 1/2 months, including one extension of the comment period that was already granted. We have actively sought public comment in some of the most impacted areas of the country, including to hold six public hearings in September.

To date, there have been about roughly 94,000 comments received on the proposed rule. We are evaluating all of the comments received in detail in developing a final rule and are meeting with all State regulatory authorities who wish to further discuss their submitted comments.

In 1977, Congress enacted SMCRA, which established a program to regulate coal mining. Over the years, OSMRE has adopted four different sets of regulations on the topic we are discussing today, most recently in 2008. Last year, however, a Federal district court vacated the 2008 rule due to Endangered Species Act violations and ordered reinstatement of the 1983 version of the stream buffer zone rule. That rule was adopted over 30 years ago and is the base for State programs today.

We've learned great deal over the last three decades about the impacts of coal mining operations and how to prevent it. We believe that the proposed rule strikes an appropriate balance between environmental protection, agricultural productivity, and the Nation's need for coal as an essential source of energy while providing greater regulatory certainty for the mining industry.

OSMRE's analysis and outreach to stakeholders identified seven key areas for improvement to uphold the obligations of SMCRA. The time allotted does not allow for me to elaborate on all of these key areas, but they are described in my written statement submitted for the record.

I would like to highlight the key aspects of the proposed revisions. They include a better understanding of baseline conditions at mining sites, improved monitoring, clarity on what constitutes material damage to the hydrologic balance outside of the permit area,

and enhanced materials handling and restoration requirements designed to take into advances in technology, information, science, and methodologies over the last 30 years.

We've used a highly experienced team to develop the draft regulatory impact analysis for the proposed rule. Among the many benefits, the draft RIA estimates that for the period from 2020 to 2040 thousands of miles of streams will be in better condition if the proposed rule is adopted and nearly 60,000 acres would be forested or reforested in an approved manner.

Consistent with EIA forecasts, the draft RIA finds that, while coal will be a part of our energy mix well into the future, coal production is expected to decline even under existing regulations. This is being driven by market conditions, including the low price of natural gas, and fuel switching by utilities, which are, in and of themselves, anticipated to result in a further decline in demand for coal and reduced annual coal production of approximately 15 percent.

The draft RIA estimates that, over the same period, the proposed rule's economic effects are minimal. Annual coal production is anticipated to be reduced by only 0.2 percent, and coal-production-related job losses will be largely offset by increases in compliance-related jobs, so essentially a wash.

The draft RIA also estimates that industry compliance costs are small, as is the rule's impact on electricity production costs for utilities at 0.1 percent.

Thank you for the opportunity to appear before the subcommittees today to testify about the proposed stream protection rule. The proposed rule reflects what Americans expect from their government—a modern and balanced approach to energy development that safeguards our environment, protects water quality, supports the energy needs of the Nation, and makes coalfield communities more resilient for a diversified economic future for generations to come.

I would be happy to answer your questions.

[Prepared statement of Ms. Schneider follows:]

STATEMENT OF
JANICE M. SCHNEIDER, ASSISTANT SECRETARY,
LAND AND MINERALS MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTE ON THE INTERIOR AND THE
SUBCOMMITTEE ON HEALTHCARE, BENEFITS, & ADMINISTRATIVE RULES
U.S. HOUSE OF REPRESENTATIVES

ON THE
PROPOSED STREAM PROTECTION RULE

DECEMBER 8, 2015

Chairman Lummis, Chairman Jordan, and members of the subcommittees, thank you for the opportunity to testify on the proposed Stream Protection Rule (SPR).

Introduction

The proposed Stream Protection Rule includes reasonable and straightforward reforms to revise 30-year-old regulations for coal mining in order to avoid or minimize impacts on surface water, groundwater, fish, wildlife, and other natural resources that residents of these communities will rely on for decades. The proposed Stream Protection Rule will accomplish what Americans expect from their government – a modern and balanced approach to energy development that safeguards our environment, protects water quality, supports the energy needs of the nation, and makes coalfield communities more resilient for a diversified economic future for generations to come.

The proposed rule keeps pace with current science, technology, and modern mining practices, while also safeguarding communities from the long-term effects of pollution and environmental degradation that endanger public health and undermine future economic opportunities, all while acknowledging, as the Energy Information Administration (EIA) does in their forecast, that coal mining and coal-fired electricity production will be a part of our energy mix for decades to come.

Every reclamation practice contained in the proposed rule has been successfully implemented by a mine operator somewhere in the country. Through this proposed rule, we are doing no more than leveraging innovations of the industry by adopting best practices developed over the last 30 years to improve the regulations.

I would like to stress that this is a proposed rule. It has been available for public review and comment for close to three-and-a-half months, including one extension of the comment period. We have actively sought public comment in some of the most impacted areas of the country, holding public hearings in Denver, Colorado; Lexington, Kentucky; St. Louis, Missouri; Pittsburgh, Pennsylvania; Big Stone Gap, Virginia; and Charleston, West Virginia. After this robust outreach process, we are looking forward to reviewing the public comments and input on the proposed rule so that we may improve upon it through the use of the many thoughtful comments received. To date, there have been more than 94,000 comments received on the rule.

Background

Along with responsible oil and gas development and growth of clean, renewable energy, coal is an important part of our Nation's energy portfolio. The responsible development of this important resource is a key part of America's energy and economic security. Coal-fired power plants generate more than one-third of the electricity produced in this country. Metallurgical coal is a critical element of the steelmaking process.

In 1977, Congress enacted the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which established a program to regulate coal mining. Congress recognized the importance of both coal production and protecting the environment from the adverse effects of coal mining. In 1979, the OSMRE published the original version of its permanent regulatory program regulations, and revised the regulations in 1983. Mining in or near streams has long been a controversial topic. Over the years, OSMRE has adopted four different sets of regulations on this topic, most recently in 2008. On February 20, 2014, however, a federal district court vacated the 2008 rule, finding that the failure to consult with the U.S. Fish and Wildlife Service on the rule violated the Endangered Species Act. The court ordered reinstatement of the 1983 version of the stream buffer zone rule. That rule was adopted over 30 years ago – it does not consider or take into account new scientific evidence, or the significant advances in mining and reclamation techniques that have occurred over the past 30 years.

The regulations that OSMRE adopted in 1983 to implement SMCRA sought to strike a balance between coal production and environmental protection. Nevertheless, we have learned a great deal over the last three decades and it is clear that coal mining operations can, and often do, still adversely impact water quality for people, fish, and wildlife. Those impacts include loss of headwater streams, long-term degradation of water quality in streams downstream of a mine, displacement of pollution-sensitive native species by highly competitive non-native species that inhibit reestablishment of native plant communities, fragmentation of large blocks of mature hardwood forests, and compaction and improper construction of postmining soils that result in reduced site productivity and adverse impacts on watershed hydrology.

By lessening these impacts, the proposed Stream Protection Rule would better achieve the purposes of SMCRA, would assure that surface coal mining operations are conducted

in an environmentally protective manner, would better protect society and the environment from the adverse effects of surface coal mining operations, and would help assure that mining will not occur where reclamation is not feasible. We believe that the proposed rule strikes an appropriate balance between environmental protection, agricultural productivity and the Nation's need for coal as an essential source of energy, while providing greater regulatory certainty to the mining industry.

SMCRA established two primary programs: first, a regulatory program to protect society and the environment from the adverse effects of coal mining operations; and, second, an abandoned mine lands (AML) reclamation program to address the hazards and environmental degradation remaining from two centuries of loosely regulated mining. These programs are important to protect public health and safety, promote the environmental well-being of the coal mining areas of the United States, and restore lands to economically viable conditions after use. Initially, OSMRE directly regulated coal mining and arranged cleanup of abandoned mine lands while states developed their own programs under SMCRA. Today, as Congress envisioned, most coal mining states have the primary responsibility for the regulation of coal mining and reclamation of abandoned mine lands, which allows OSMRE to focus on overseeing the administration and maintenance of the state programs and assisting the states and tribes in implementation of those programs.

Goals of Proposed Rule

In this proposed rule, OSMRE seeks to incorporate the best practices of today's coal mining industry from across the country while providing more comprehensive water protection than the existing rule and its predecessors, which focus primarily on streams and their buffer zones. Specifically, OSMRE's analysis and outreach to stakeholders identified the following seven areas for improvement to ensure regulatory certainty, and uphold the obligations of SMCRA in 2015 to protect public health and safety while promoting the environmental well-being of the coal mining areas in the United States:

First, perennial and intermittent streams derive their flow from both groundwater discharges and surface runoff from precipitation events. Therefore, there is a need to define the point at which adverse mining-related impacts on groundwater and surface water reach an unacceptable level. SMCRA has always provided that no permit may be approved unless the regulatory authority finds that the proposed operation will not result in material damage to the hydrologic balance outside the permit area, but neither the Act nor the existing regulations define "material damage" or establish criteria for determining what level of adverse impacts would constitute material damage. The proposed rule would require the regulatory authority to establish numerical standards for material damage and incorporate those standards into the permit. This definition tailors the rule to fit the streams of a specific region.

Second, the proposed rule would require that the permit applicant collect adequate pre-mining baseline data about the site of the proposed mining operation and adjacent areas. This will establish an adequate baseline with which the impacts of mining may be

compared. The existing rules require data only for a limited number of water quality parameters rather than the full suite needed to establish a complete baseline against which the impacts of mining can be compared. The existing rules also fail to cover the complete hydrologic cycle, which limits the value of the collected data. Furthermore, the existing rules contain no requirement for determining the biological condition of streams within the proposed permit and adjacent areas, so there is no assurance that the permit application will include baseline data on aquatic life.

Third, the proposed rule would provide for effective, comprehensive monitoring of groundwater, surface water, and the biological condition of streams during and after mining and reclamation. Proper monitoring enables timely detection of any adverse trends and allows timely implementation of any necessary corrective measures. Proper implementation of corrective measures can prevent the mine operator from incurring very costly long-term water treatment obligations and would also protect community water resources. The existing rules require monitoring of only water quantity and a limited number of water-quality parameters, not all parameters necessary to evaluate the impact of mining and reclamation. The existing rules also do not ensure that the number and location of monitoring points, or the length monitoring will continue, will be adequate to determine the impact of mining and reclamation. As a result, the proposed rule would require more comprehensive monitoring, and for monitoring data to be evaluated as part of any application for bond release. No bond could be released if the monitoring data show adverse trends that could result in material damage to the hydrologic balance outside the permit area.

Fourth, the proposed rule would ensure the protection or restoration of streams and related resources. This includes the headwater streams that are important to maintaining the ecological health and productivity of downstream waters. The existing rules have not always been applied in a manner sufficient to ensure protection or restoration of streams, especially with respect to the ecological function of streams. The proposed rule would prohibit mining activities in or within 100 feet of perennial and intermittent streams unless the regulatory authority finds that the proposed activity will not preclude any premining, designated, or reasonably foreseeable uses of the stream. If a mine operator chooses to mine through a perennial or intermittent stream, the proposed rule would require the operator to restore both the hydrological form and the ecological function of the affected stream segments.

The proposed rule also includes best practices intended to minimize the length of stream buried by excess spoil fills, and require that excess spoil fills be designed and constructed to be no larger than necessary to dispose of the excess spoil generated. Fill construction techniques that involve end-dumping would be prohibited as inconsistent with SMCRA, which requires that excess spoil be transported and placed in a controlled manner. These new standards would protect downstream water quality and the long-term stability of the fill.
In addition, an operator choosing to construct an excess spoil fill in a perennial or intermittent stream would be required to implement fish and wildlife enhancement measures to offset the environmental harm resulting from the fill.

Maintenance, restoration, or establishment of riparian corridors or buffers, comprised of native species, for streams is also a critical element of stream protection. In forested areas, riparian buffers for streams moderate the temperature of water in the stream, provide food (in the form of fallen leaves and other plant parts) for the aquatic food web, stabilize stream banks, reduce surface runoff, and filter sediment and nutrients in surface runoff. As a result, the proposed rule also would require that the operator establish a 100-foot-wide riparian corridor, using suitable native species, on disturbed lands along each bank of perennial, intermittent, and ephemeral streams, unless and until a conflicting postmining land use is implemented.

Fifth, the proposed rule would ensure that operators and regulatory authorities make use of advances in information, technology, science, and methodologies related to surface and groundwater hydrology, surface-runoff management, stream restoration, soils, and revegetation, all of which relate directly or indirectly to protection of water resources.

Sixth, the proposed rule would ensure that land disturbed by surface coal mining operations is restored to a condition capable of supporting the uses that it could support before any mining, including both those uses dependent upon stream protection or restoration and those uses that promote or support protection and restoration of streams and related environmental values. Existing rules and permitting practices have focused primarily on the land's suitability for a single approved postmining land use and they have not always been applied in a manner that results in the construction of postmining soils that provide a growth medium suitable for restoration of premining site productivity. For example, postmining soils must include a sufficient root zone to support those uses and soil materials must be placed in a manner that minimizes compaction. Trees and other desirable vegetation struggle to survive on thin, compacted soils. A corollary provision in the proposed rule would require that reclaimed minesites be revegetated with native species unless and until a conflicting postmining land use, such as intensive agriculture, is implemented. Soil characteristics and the degree and type of revegetation have a major impact on precipitation infiltration and surface-water runoff quantity and quality as well as on aquatic life and the terrestrial ecosystems dependent upon perennial and intermittent streams. Nonnative grasslands on mined land throughout Appalachia are not as productive as the native hardwood forests they replaced. These existing reclamation practices reduce the region's future potential economic opportunities.

Seventh, the proposed rule would update and codify requirements and procedures to protect threatened and endangered species and designated critical habitat under the Endangered Species Act of 1973 to help provide regulatory certainty for mining operators. It also would better explain how the fish and wildlife protection and enhancement provisions of SMCRA should be implemented.

Regulatory Impact Analysis

We have used a highly experienced team to develop the draft Regulatory Impact Analysis (RIA) for the proposed rule. The draft RIA estimates that, for the 21-year period from 2020 to 2040, thousands of miles of stream will be in better condition if the proposed rule is adopted.

In addition, the draft RIA estimates that nearly 60 thousand acres would be reforested or reforested in an improved manner under the proposed rule. These are expected to result in significant environmental and ultimately health benefits to local communities.

Consistent with Energy Information Administration (EIA) forecasts, the draft RIA finds that coal production is expected to decline, even under the existing regulations, but coal will be part of our energy mix well into the future. The draft RIA also finds that market conditions such as the demand for coal and the availability and low price of natural gas and alternative sources of energy will result in a decline in annual coal production of approximately 15 percent (162 million tons) over the 21-year evaluation period without any changes to the existing regulations.

The draft RIA estimates that over the same period the proposed rule would reduce annual coal production by 0.2 percent, result in an increase in coal prices of 0.02 to 1.2%, and an increase of 0.1% in national electricity production costs for utilities.

The draft RIA also estimates that industry compliance costs would average 0.1% or less of aggregate annual industry revenues.

This Administration understands and is sensitive to the importance of high wage mine jobs to rural communities. Moreover, we are aware of the shifting economic trends – irrespective of this rulemaking –impacting the coal industry and are concerned about future generations and the resources that will be left behind for them to sustain the life they know. The draft RIA predicts that the proposed rule would have minimal impacts on employment, with an average annual reduction of 260 jobs related to coal production and an annual average increase of 250 jobs related to compliance with the proposed rule. This means production-related job losses would be largely offset by increases in compliance-related jobs resulting in a net loss of approximately 10 jobs.

Public Participation

Hearing directly from the public is an important component of the rulemaking process that we take very seriously. To that end, as noted above, the OSMRE conducted six public hearings between September 1, 2015, and September 17, 2015, in Denver, Colorado; Lexington, Kentucky; St. Louis, Missouri; Pittsburgh, Pennsylvania; Big Stone Gap, Virginia; and Charleston, West Virginia.

OSMRE also extended the comment period through October 26, 2015, to allow organizations and individuals additional time (for a total of almost 3 and a half months) to prepare and submit their comments. We will evaluate all comments received in

developing a final rule. We have also conducted outreach to Congressional leadership, spoken to state officials, gone out in the field, and met with various stakeholders to discuss their concerns and found these interactions to be helpful and productive. The process has been tremendously enhanced as a result of input from states, industry and NGOs.

Conclusion

Thank you for the opportunity to appear during this joint subcommittee hearing today to testify on the development of the proposed Stream Protection Rule. The proposal of this rule furthers the Administration's goal to establish a modern and balanced approach to energy development that safeguards our environment, protects water quality, supports the energy needs of the nation, and makes coalfield communities more resilient for a diversified economic future for generations to come. I would be happy to answer your questions.

Mrs. LUMMIS. I thank the witness.

And we have been joined by the ranking member of the Subcommittee on Health.

Do you wish to make an opening statement, Mr. Cartwright?

Mr. CARTWRIGHT. I do.

Mrs. LUMMIS. You are recognized for 5 minutes.

Mr. CARTWRIGHT. Thank you, Chairman Lummis.

And welcome, Assistant Secretary Schneider. I appreciate your being here. I appreciate your testimony, and I look forward to the question period too.

I come from a district in northeastern Pennsylvania, where we know a lot about coal mining. Coal brought jobs, prosperity, and economic development to northeastern Pennsylvania. Unfortunately, coal also left us a legacy of environmental catastrophe that we continue to struggle with even to this day.

We've learned lessons about the dangers and costs of irresponsible mining practices in my district, and they inform the discussion that we have here today. My district is littered with coal refuse piles, most of which are decades or more old that every day poison local streams and rivers. We have mines that have been abandoned for generations that pollute streams and create hazardous conditions for my constituents.

Coal runoff from these mines affects families, communities, and entire regions in Pennsylvania. And the companies that profited from the mining and created these messes are largely no longer around. And what that means is the public is bearing the burden, and it's slowly paying to clean up this environmental catastrophe.

It pains me to see the same mistake being made with the streams and mountains of Appalachia. Once again, mining companies are destroying the environment. We'll leave it to future generations of taxpayers to pick up the pieces.

Now, critics of the stream protection rule have called it Federal overreach, of course, but what this rules does is it provides basic standards to ensure we don't continue to destroy hundreds of mountains and thousands of miles of streams and rivers, which our children and our grandchildren will be left to clean.

Despite the majority's claims to the contrary, this is not a war on coal. These regulations are long overdue. Some parts of SMCRA are over 30 years old. And we owe it to our constituents and our children to make sure that surface mining is done in a way that is safe and environmentally responsible. Mountaintop removal mining in Appalachia is already responsible for the destruction of over 500 mountains and approximately 2,000 miles of stream channels, and we need to fix the problem.

If anything, these regulations do not go far enough. While the proposal does improve the baseline data collection, enhance monitoring and bonding requirements, and restore stream functions, it falls short in other areas. And, in particular, I hope OSM will look at the many comments that have been submitted and strengthen the stream buffer rule.

Now, OSM projects that the rule will improve water quality, forest and biological resources, recreational opportunities, while increasing carbon storage and reducing carbon emissions. And, ac-

cording to OSM's calculations, all of these benefits will come at a net loss of a mere 10 total jobs.

I am interested in hearing more from you, Ms. Schneider, about how OSM came to calculate the net loss of 10 jobs and how the offset of regulatory compliance jobs makes that up.

Now, this rule is about taking reasonable steps to protect our environment and not pillaging the land in the quest for the cheapest solution possible while leaving our children and grandchildren to clean up the mess.

I thank the chairman again.

I commend the Office of Surface Mining for its progress, and I look forward to hearing more details about this important rulemaking from you, Assistant Secretary Schneider.

Thank you, Mr. Chairman. I yield back.

Mr. MEADOWS. [Presiding.] I thank the gentleman for his comments and certainly for his eloquent remarks.

I'm going to go ahead and recognize myself. We're trying to keep this going while—I won't say "your side" but somebody is trying to adjourn the events. But I know it's not the gentleman from Pennsylvania. So we're going to try to keep this moving. I'll go ahead and recognize myself for 5 minutes for a series of questions.

So, Ms. Schneider, help me understand a little bit the process. What I've been informed with is that this whole rulemaking process actually didn't really involve stakeholders, as has been, I guess, intimated, and then we have one public hearing—is that correct? Was it one public hearing?

Ms. SCHNEIDER. No. The process has been, actually, quite extensive. And one of the reasons it's taken as long as it's taken is a real effort to try to engage a broad range of stakeholders.

Mr. MEADOWS. All right. So why did the eight States eliminate themselves? I guess you're down to two States now from a NEPA standpoint. Why did they get out?

Ms. SCHNEIDER. I can't really speak to why they terminated——

Mr. MEADOWS. Why do you think they got out?

Ms. SCHNEIDER. What they have said to us is that they had some concerns about the process. They wanted to be more engaged——

Mr. MEADOWS. So did you address those concerns?

Ms. SCHNEIDER. Yes, I think we are. What we did back in 2010——

Mr. MEADOWS. You are, or you have?

Ms. SCHNEIDER. Both. And, if I may, sir——

Mr. MEADOWS. Okay. Go ahead.

Ms. SCHNEIDER. —back in 2010 and 2011, as I've been advised—and I was not at the Department for most of the period involved, but I've been advised that OSMRE provided chapters of the administrative draft of the EIS to the State regulatory authorities. As cooperating agencies, the States had the opportunity to provide comments. They did provide comments. We used those comments in developing the draft environmental impact statement that is out on the streets.

And, through the course of this, we issued an advance notice of proposed rulemaking and a scoping process. We got over 50,000 comments on that——

Mr. MEADOWS. Well, I know how that works. I've been involved in that, Ms. Schneider. I mean, I know, I mean, that goes out; you get tons of the comments from the Sierra Club and others. I mean, you know, the stacks are voluminous. But when it really comes to stakeholders that have a stake in it, so to speak—and I know you view them equally.

So how many days did you give the States to respond, to review this?

Ms. SCHNEIDER. I was not at the Department, so I——

Mr. MEADOWS. But, I mean, obviously, you prepared for this hearing. So how many days were given?

Ms. SCHNEIDER. Sir, I actually don't have that information.

Mr. MEADOWS. Does your counsel behind you have it?

Ms. SCHNEIDER. I don't believe so. They're not counsel.

But what I can tell you is what we're doing on a going-forward basis. I set up——

Mr. MEADOWS. All right. Did you incorporate their comments in the EIS?

Ms. SCHNEIDER. Yes, we did.

Mr. MEADOWS. All of them? That's your testimony?

Ms. SCHNEIDER. Sir, my understanding, what I've been advised by OSMRE is that the comments that were provided by the State regulatory authorities were incorporated into the new draft document.

All of the States have an opportunity and many have submitted comments on that document. We are now in a process of a series of meetings with all of those State regulatory authorities to walk through their comments to make sure that we understand them. We've got at least 14 meetings that have either we've already started or are being scheduled. We are looking to schedule more.

So I would say that, since I have been in this job, we are making a very concerted effort to engage what I agree are very important stakeholders in this effort. And I am committed to making sure that we understand the State perspectives on it.

Mr. MEADOWS. So tell me about the public hearing in Baltimore then. I mean, why do you have a public hearing in Baltimore? I guess that's a hotbed of surface mining?

Ms. SCHNEIDER. We did not have a public hearing in Baltimore, to my knowledge. We did meet with the State regulatory authorities at the IMCC meeting in Baltimore before the draft——

Mr. MEADOWS. That's what I'm referring to. I mean, so you have it there. Why do you pick Baltimore?

Ms. SCHNEIDER. Well, the IMCC picked Baltimore. And it was, as I understand it, one of their regular meetings. Because most of the State regulatory authorities were in Baltimore for that meeting, we wanted to facilitate their participation in these discussions, and so we had a meeting——

Mr. MEADOWS. So would you say that that participation was robust there in Baltimore?

Ms. SCHNEIDER. I did not attend that meeting. What was communicated to me was that there was robust participation by the State regulatory——

Mr. MEADOWS. And so do you think it would be fair to characterize that all 10 of the States would be supportive of this rule and that they are happy with the process?

Ms. SCHNEIDER. I would be reluctant to characterize anyone else's position on the rule.

Mr. MEADOWS. Well, then why are we here today, I guess? I mean, you have to characterize something.

Ms. SCHNEIDER. Yes.

Mr. MEADOWS. And so let me just suggest——

Ms. SCHNEIDER. But here's what I will say. I mean, we've got meetings set up. I've had several meetings with Wyoming already. We've done meetings with Ohio, with Maryland, with Oklahoma, with Indiana, with Pennsylvania. We've got meetings scheduled for—well, we had one with Virginia—scheduled for Illinois, North Dakota, Utah, Montana. We're working through trying to get another meeting up in Fargo with North Dakota. We're working on trying to get a meeting with Alaska in Anchorage.

So we are really trying to make sure that we understand and that we hear directly from the State regulatory authorities about what their comments are and concerns are with respect to the rule so that we can make sure that we address those in an adequate way. I feel that's very important to accomplish, and that's why we're going through this process now that I'm in this position.

Mr. MEADOWS. All right.

Last question, and then I'll go to my good friend, Mr. Cartwright.

So when we look at this particular—he was referring to jobs. And I guess I'm very concerned with the way that we came about the impact on jobs and with private contractors, or the lack thereof, or the changing thereof.

So how confident are you that your projection on job loss gets an A?

Ms. SCHNEIDER. I'm actually pretty confident that we've done——

Mr. MEADOWS. So you've looked at the matrix on that?

Ms. SCHNEIDER. I have reviewed the regulatory impact analysis——

Mr. MEADOWS. No, the matrix of the—yeah, I guess the matrix of jobs. I mean, when you look at jobs, how do you figure out—because I talk to all of my coal States, and they say that this will kill them, and yet you're saying, no, it's pretty good.

Ms. SCHNEIDER. Right. So let me step back and discuss a little bit about how we handled the regulatory impact analysis, which goes through what the impacts of the proposed rule would be and what the impacts on jobs will be.

It's a very different process from the National Mining Association report. They were two reports, one in 2012——

Mr. MEADOWS. So you're saying theirs is not accurate?

Ms. SCHNEIDER. I do not believe theirs are accurate. I believe ours is more accurate.

Mr. MEADOWS. And you base that on what?

Ms. SCHNEIDER. I base it on reading their report. And——

Mr. MEADOWS. So you're the official arbitrator of what creates jobs or not.

Ms. SCHNEIDER. No——

Mr. MEADOWS. I'm a small-business guy, so I find that very fascinating. But you go ahead. So you're the arbitrator of what creates a job or not.

Ms. SCHNEIDER. No, I'm not the arbitrator of that. But when you look at the analysis that was done, the National Mining Association—I mean, there are a couple of different reports out there. One was a report that they issued in 2012, which was based on a preliminary version of the rule that actually did not reflect the version of the rule that is out on the street. So it's been revised since then. So those jobs——

Mr. MEADOWS. So how many more jobs did you create with the revision?

Ms. SCHNEIDER. If I may, sir?

Mr. MEADOWS. Yep, you may.

Ms. SCHNEIDER. So sometimes you'll hear the 7,000 job-loss number. That's based on the earlier reports that were leaked. We've changed the rule from what was out earlier, so that number is no longer—or it never was, because it was preliminary—but no longer a relevant number, from my perspective.

The new National Mining Association job number that the chairman referenced in her opening statement makes some very significantly flawed assumptions. For example, it assumes that there would be no temporary impacts allowed at all with respect to material damage to the hydrologic balance. And it assumes, when you look at it, that it would halt most longwall mining and that it would strand reserves, and that's simply incorrect.

So when they talk about their job numbers, their job numbers and the job-loss numbers are based on extremely flawed assumptions. Now, we understand that the way they came to this is through a survey of operators. There are no real metrics that are measurable. You know, it's a very subjective approach. So——

Mr. MEADOWS. So, since there's no metrics——

Ms. SCHNEIDER. So——

Mr. MEADOWS. I'm going to go ahead and interrupt you because I'm way over time, and the gentleman from Pennsylvania has been gracious, but—I won't make it up to you, but I will recognize you here in just a second.

But here is my concern in talking to operators. And we're not big coal territory, but we have mines in every single county that I have. If there is a way to deviate in the way that your rulemaking comes at, it is normally implemented in the harshest terms possible with the greatest impact possible. And that comes from the miners who actually do the work. And so, if there is not a good matrix, it becomes very difficult to quantify it.

And, with that, I will recognize the gentleman from Pennsylvania so he can try to rebut everything.

Mr. CARTWRIGHT. Thank you, Chairman Meadows.

You know, Assistant Secretary Schneider, I mentioned in my opening statement that I come from northeastern Pennsylvania. If you fly into the Wilkes-Barre/Scranton International Airport and you look out the window as you land, you can see where the Lackawanna River flows into the Susquehanna River. And there's something there called the Old Forge borehole. And it's mine effluence

spilling into the river, Ms. Schneider—60 million gallons every day flowing into the river.

And it's so full of oxides, oxides of metals, that it's orange. And from 2,000 feet up, you can see this distinctive orange plume flowing into the Susquehanna River. And you think, my goodness, couldn't we have prevented something like that? And this is in the Chesapeake Bay watershed, so this finds its way into this national treasure we call the Chesapeake Bay.

And, you know, what was it, about a month or 2 months ago, we had the Gold King Mine disaster, where everybody was saying a high state of outrage in this room about spilling 3 million gallons of effluent in Colorado. I repeat myself: It's not 3 million gallons on a one-event basis. It's 60 million gallons a day happening in my district. And you can see it from the air.

So making sure that coal mine operators act responsibly and provide for the future cleanup of what they do is something that strikes very close to my home.

Now, a recent analysis by the Office of Surface Mining found that roughly 41 percent of the outstanding mining permits from West Virginia are held by a company whose parent corporation is now in bankruptcy.

Are you familiar with that statistic?

Ms. SCHNEIDER. I'm not familiar with that precise statistic, but I believe I understand where you're going.

Mr. CARTWRIGHT. Well, part of what troubles me is that coal company executives are still getting big payouts, and workers and taxpayers are left holding the bag for these cleanup expenses. Wyoming and West Virginia officials are dealing with the issue with Alpha Natural Resources having filed for bankruptcy.

How does this rule, Assistant Secretary Schneider, how does it address the problem of bankrupt coal companies walking away from their obligations and passing off the costs to the taxpayer?

Ms. SCHNEIDER. Mr. Cartwright, this proposed rule does not specifically address that specific issue.

The issue that you're referring to is an issue that is of great concern to the Department. It is the issue of self-bonding and the ability of very large companies, if they have the financial wherewithal, to self-bond for their reclamation liability. This is a provision that is included in SMCRA, so it is an authorized portion of the Federal program and it is an authorized portion of many State programs.

We are looking very, very closely at the issue. The situation with the Alpha Resources bankruptcy has raised very significant issues in the State of Wyoming, in particular, as well as in the State of West Virginia. OSMRE has an advisory role with respect to this issue. We stand ready to work with the States to try to address this issue. It is something that is of very serious concern to us but——

Mr. CARTWRIGHT. I don't mean to interrupt you, but I want to move to the next question.

Can you explain how trusts and annuities will take the place of conventional bond instruments to ensure funds are available for mining cleanup whether the company is around or not?

Ms. SCHNEIDER. Well, the issue of appropriate financial assurances, at least from my personal perspective, is something we need

to look at. We are certainly doing this on the offshore right now, where we have a great deal of liability to the American public with respect to aging oil and gas facilities.

I think if there are ways that we can adequately provide for additional financial assurance in a flexible way that lowers costs for companies, we should be looking for those opportunities. Because I agree with your premise that the American public should not be left holding the bag on this.

Mr. CARTWRIGHT. Do you believe that these instruments are sufficient, fully, to fund the restoration that can be necessary after mountaintop removal mining?

Ms. SCHNEIDER. It would depend upon the nature of the instrument and the precise terms and what sort of financial backing there would be behind it.

Mr. CARTWRIGHT. Okay. I thank you.

And I yield back.

Mrs. LUMMIS. [Presiding.] The chair recognizes Mr. Walberg for 5 minutes.

Mr. WALBERG. I thank the chairman.

And thank you, Ms. Schneider, for being here with us.

What threshold does OSM use in terms of lost jobs and lost coal production before it considers a proposal as not striking the proper balance? You mentioned that, for years to come, coal for energy would be on America's plate. What do you consider there when you look at it?

Ms. SCHNEIDER. Well, candidly, there isn't a bright-line test for that. I mean, what we're trying to do in the proposed rule—and this is actually in direct response to the comments that we got from the State regulatory agencies—is to look at different areas of the country so that we have an understanding about how the proposed rule would have a potential effect on coal production as well as the jobs that may go along with it.

Mr. WALBERG. But no specific approach to that? Is that what I'm hearing, that you don't have a specific threshold that you use in determining lost jobs and lost production?

Ms. SCHNEIDER. Well, we do look at those questions, but, you know, we don't say, well, if we lose X number of jobs—you know, there's not a bright-line litmus test.

Mr. WALBERG. So you didn't go out and look for a direct impact?

Ms. SCHNEIDER. Oh, we do look for direct impacts, absolutely.

Mr. WALBERG. How do you do that?

Ms. SCHNEIDER. Well, we're doing it through the regulatory impact analysis here, and we're doing it through the process that we're undergoing right now.

I mean, again, what we've done is we've put drafts out for stakeholder review. Our expectation is that those interested parties, including the States, will provide additional information for us to consider.

Mr. WALBERG. But did you go directly to various coal mining operations, mining operations with different approaches to mining, different techniques and characteristics, and——

Ms. SCHNEIDER. I have personally been to different mining operations across the——

Mr. WALBERG. —and directly asked them what impact this would be?

Ms. SCHNEIDER. I have not done that previously, but I am doing it in the course of my meetings with the State regulatory agencies.

Mr. WALBERG. But you asked the State about their position on whether they thought there was a need for changing rules in mining operations?

Ms. SCHNEIDER. Yes. We have those discussions based on the comments that they sent to us. I mean, when I've been out in coal country—and I've been to West Virginia and to Kentucky and Wyoming and Colorado, and we're planning a trip to Alaska, and I'm planning to go to Ohio—we'll be asking these questions.

I mean, I think what's important to understand is we're really just in the middle of a process. We've done, you know, what we think is good work to tee up these issues and to present proposals, but I think the process is working. And what we're trying to do is get good information.

We got great information from the State of Wyoming when we met with them. We are scheduling another video conference——

Mr. WALBERG. Well, I hope that continues.

Ms. SCHNEIDER. —with Mr. Parfitt. And getting that information——

Mr. WALBERG. Okay.

Ms. SCHNEIDER. —helps us refine our numbers and our thinking about what would be appropriate.

I will say, I do care a lot about jobs. I used to work in the private sector. I was in the private sector for 13 years. I've worked on coal projects in rural areas——

Mr. WALBERG. Well, let me jump in, because I only have a minute and a half left here.

In 2012, a 2012 congressional investigation that you're aware of found out that the Department of the Interior attempted to alter their own coal industry job-loss numbers, estimated at 7,000 at that time. According to your testimony, the rule will not only result in the yearly loss of only 260 jobs, as opposed to 7,000, but produce a net yearly gain of 250 jobs.

Can you explain the disparity between your current estimate of 260 lost jobs and, I guess, also, the 250 compliance jobs—those are government jobs—that will be gained as a result of this, versus the 7,000 you originally had?

Ms. SCHNEIDER. Sure. And the answer is, I think, very simple. The 7,000-job number was based on a preliminary draft of the rule. The rule that is on the streets now is different, and so the jobs that are potentially impacted by this rule have changed.

And the jobs that we're envisioning are not just government jobs. We're actually envisioning jobs that would be high-paying jobs in industry, including jobs like water-quality monitoring, materials handling, you know, heavy machinery jobs. I mean, these are well-paying jobs that we expect to continue, some as a result of this rule.

Mr. WALBERG. Well, we hope that's the case. I appreciate the information.

And I yield back my time.

Ms. SCHNEIDER. Thank you.

Mrs. LUMMIS. The chair now recognizes Mr. Hice for 5 minutes.

Mr. HICE. Thank you, Madam Chairman.

You know, one of the recurring themes that we see here in the Oversight Committee is government bureaucrats have little regard for the impact that their rules have on businesses and people all across this country. And we have seen it, I have seen it time and time and time again throughout the Federal Government. And, you know, now, as we come looking at the Office of Surface Mining, the stream protection rule, the same thing is happening all over again.

And it's been brought up today, and I share great concern with the widely different figures as to how this is going to impact specifically the coal industry. According to what I've read from OSM, you believe that there will be about 260 mining jobs lost but 250 compliance jobs created, so, ultimately, costing 10 jobs.

But here we go with compliance police. We don't need more compliance police. We don't need more Federal agents, Federal Government employees. We need to let people work and do what they do best without the government perpetually breathing down their necks, finding someplace that they have done some minuscule something wrong.

We hear it over and over and over. And it's time we get the government off the back of businessowners and businesses and let them do what they are there to do. And you're looking at 250 additional compliance police. It's just very disturbing.

But then you look at the Department of the Interior, the parent agency of OSM, and they had a contractor estimate that their job cost would be upwards of 7,000. So you've got 10. Your parent agency says it could cost 7,000 jobs. And, you know, it just goes on and on and on.

We find out, at least an investigation later determined, the Department of the Interior attempted to downplay the figures by using falsified information. But whatever the case may be, we have 10 jobs lost, 7,000 jobs lost, depending on who you talk to, when you talk to them.

And then we come, as you mentioned earlier, the National Mining Association, the ones who ought to know the best as to the impact that this rule is going to have on their industry, and their numbers are vastly different. And I'm sure you know what those numbers are, but they estimate between 112,000 to 280,000 jobs that will be lost because of this.

And in the same study, they estimate that the lost value of coal produced could fall between $14 billion and $29 billion per year, and the loss of national tax revenue could be as high as $18 billion.

I mean, the figures are all over the place, Ms. Schneider. And, you know, how in the world can you account for these differences? These are not minuscule differences. These are vast differences. How in the world can you account for this?

Ms. SCHNEIDER. Well, let me—there's a couple of reasons.

First, on the 7,000 jobs lost, as I've testified previously, that is an incorrect number. That number is not based on the proposed rule that is out on the streets today for public comment.

With respect to the numbers that you shared from the two National Mining Association reports, the first set of numbers are based, again, on a preliminary draft that was leaked to stake-

holders. Those numbers are not correct. With respect to the new National Mining Association report that was just recently issued this year, those numbers are also not correct. The high end of those numbers are about the entire job numbers of this entire industry nationwide. This rule will not shut down the mining industry in the United States.

The real issue happening in the coal industry right now is an economic one. It is the abundance of natural gas. It is low prices of natural gas. It is fuel switching by utilities to natural gas. That is decreasing the demand for coal, and that is what is driving job losses in coal country.

Now, the administration would like to work——

Mr. HICE. My time has expired.

Ms. SCHNEIDER. —with Congress——

Mr. HICE. Let me just close up.

Madam Chairman——

Ms. SCHNEIDER. —on our POWER Plus initiative.

Mr. HICE. Thank you very much. My time has expired.

Madam Chairman, you know, I just wonder if this is just nothing other than a final push by Obama's administration, quite frankly, to give a final death blow to the coal industry before leaving office or if this whole thing ultimately just comes down to yet another reckless government bureaucracy playing fast and loose with American jobs.

And, with that, I will yield back. Thank you.

Mrs. LUMMIS. The chair now recognizes Mr. Jordan for 5 minutes.

Mr. JORDAN. Thank you, Madam Chair.

Ms. Schneider, when you started this process, my understanding is you invited several of the impacted States to participate. Is that accurate?

Ms. SCHNEIDER. Yes, sir.

Mr. JORDAN. How many States did you invite?

Ms. SCHNEIDER. I don't have that number, but we can provide it for the record. I was not at the Department at that time.

Mr. JORDAN. My understanding is it was 10 States that entered into a memorandum of understanding. Is that accurate?

Ms. SCHNEIDER. I don't have that number but can provide it for the record, sir.

Mr. JORDAN. Did you enter into a memorandum of understanding with some number of States?

Ms. SCHNEIDER. Yes, sir.

Mr. JORDAN. Okay.

Ms. SCHNEIDER. That is my understanding.

Mr. JORDAN. You did. Okay. Do you happen to know how many States entered into a memorandum of understanding? I won't say——

Ms. SCHNEIDER. No, sir, I do not now.

Mr. JORDAN. Okay.

Did any turn down your offer to—when you offered States to participate in the process and enter into an agreement with you, did any of them turn it down? Do you know that much?

Ms. SCHNEIDER. I was not at the Department at that time. I do not know, sir.

Mr. JORDAN. Okay.

Of those States that did enter into a memorandum of understanding with you at the start of this process, how many of them still have a memorandum of understanding with you?

Ms. SCHNEIDER. One, the State of Wyoming. And I commend them for their efforts at staying at the table.

Mr. JORDAN. So my understanding is 10 States were invited. All of them entered into a memorandum of understanding. At some point, a significant number—well, nine of them said, we no longer want to work with you guys. Would that be accurate?

Ms. SCHNEIDER. Yeah, again, I don't—I don't know that the numbers are correct.

Mr. JORDAN. Well, it's kind of interesting, Ms. Schneider, you know that one State——

Ms. SCHNEIDER. I do know——

Mr. JORDAN. —still has it, but you said, oh, there's other States that we offered to work with that did enter into a memorandum, but I can't remember that number. The number we have is 10.

Ms. SCHNEIDER. Well, I will stipulate with you, for proposes of the testimony, that that is the correct number.

Mr. JORDAN. Okay. Okay. So we got that.

So you had 10 States entered into this process at the start when you were putting together the rule. When you get to the end of the process or somewhere during the process, 90 percent of the States you've entered into an agreement with said, we don't like where this is going, they're not really working with us. And only one State is left.

Is that accurate? Well, you might not agree with the opinion in there, but the numbers are accurate, right?

Ms. SCHNEIDER. A number of the States that OSMRE had previously entered into memoranda of understanding to be cooperating agencies in the NEPA process have terminated their participation. We have sent a letter to them asking them to reengage. I would like to have them reengage. I value their participation in the process, and I would like to see them do that.

Mr. JORDAN. No, I'm sure you would, but the fact is they don't want to reengage. And they have been so focused on not reengaging, so disappointed in the process, that nine of them said, we want out.

Ms. SCHNEIDER. Right, but I would add——

Mr. JORDAN. Now, let me ask one other question, too, then. So isn't there an environmental impact statement that also comes out that you guys put together at the end of this process, as well, right?

Ms. SCHNEIDER. A draft of the environmental impact statement has been issued. It was open for the public comment period of about 3 1/2 months, and——

Mr. JORDAN. And how many of those 10 States that originally signed the memorandum of understanding have signed on to the environmental impact statement?

Ms. SCHNEIDER. Seventeen States did provide comments on the draft environmental impact statement.

Mr. JORDAN. No, I'm talking about the 10 States that originally started with you. Did any of them sign on and say they agreed with the environmental impact statement?

Ms. SCHNEIDER. We're still working through their comments. I'm not aware of any States that have said, put our seal on the cover, if that's what you're asking me.

Mr. JORDAN. That's exactly what I'm asking. Because didn't a couple of States specifically say, don't put our seal on the cover? Is that right?

Ms. SCHNEIDER. I do know that Wyoming took that position.

Mr. JORDAN. Okay.

So here's just simple numbers. When you start the process, 10 States enter into an agreement with you to work cooperatively with you. Through the course of the process, judging by their action, 9 of those 10 States said, we want out of this, we don't like where this is going. Then the final statement is an environmental impact statement, and none of the 10 States will sign that or give their stamp of approval.

So 10 percent of the people—90 percent wanted out. Throughout the process, one hung in there, hoping, praying it might be somewhat decent. And then, when you get to the final statement, not one single State that started this process with you is actually in agreement with the final environmental impact statement.

So that's like, I remember I had this guy one time who came to me and he said, you know what—a guy who ran a business—he said, "I've been in an argument with six different people today. I don't know what's wrong with all these people." And I kind of looked at him, and I said, "I don't either," because if I'd have said something, I'd have been the seventh, right?

So when you've got 10 States you enter into an agreement with and none of them will sign the final product, that's a problem.

Ms. SCHNEIDER. I would clarify, it's just a draft product. We are just in the middle of this process.

Mr. JORDAN. A draft product that none of them will sign, and 9 out of 10 States who started with you said "I want out" even before you came up with the draft product.

Ms. SCHNEIDER. I will say that a lot of States are willing to meet with us. We either have met with them or we're continuing to schedule meetings with them. I understand your——

Mr. JORDAN. Well, you better schedule a lot more because——

Ms. SCHNEIDER. I understand your concern. I was not——

Mr. JORDAN. —you certainly don't have much buy-in right now, Ms. Schneider.

Ms. SCHNEIDER. —at the Department at that time, and what I'm trying to do is make sure that we have a good process going forward.

Mr. JORDAN. Thank you.

Mrs. LUMMIS. The chair now recognizes herself for 5 minutes.

And, Mr. Chairman, before you leave, I'll tell you why the State of Wyoming chose to stay in this.

Mr. JORDAN. I figured you'd have something to stay.

Mrs. LUMMIS. They did it to preserve their ability to engage in litigation.

And that's the problem with this process. The State of Wyoming chose to stay in simply to preserve their right to sue the Federal Government because the process was not cooperative.

And therein lies the problem. OSM agreed for the States to become cooperating agencies under NEPA, which means States are supposed to be fully involved in preparing a draft EIS and regulatory impact analyses. But OSM did not consult with States in preparing these documents. The State of Wyoming complained. Other States complained.

Wyoming's Governor's staff say that the Department just brings State agencies in, reads a list of proposals, and then allows States a few minutes to comment before ending the meeting. That's not cooperating. That is just a pro forma process and elevating form over substance. The substance of cooperating is give-and-take and a discussion where both sides are given due deference to their concerns.

And a process where 10 States enter into the process and only 1 State comes out at the end and that State does so simply to preserve the right to sue is, in my mind, a failed process. And so I would just remark to you that this process has failed and that it would be wise to go back and start over and go through a truly cooperating status with States so that they feel like they are part of the discussion.

And I can tell you from just the last month in the House of Representatives, it makes a huge difference. Just the change in the new Speaker, Speaker Ryan, has brought about that process of cooperation that didn't exist here before he was Speaker. And his Speakership has already proven the benefits when you allow your stakeholders to be part of the discussion. It really works.

And you will find that States will be marvelous partners if there is truly a cooperative process rather than a command-and-control process. And when States are brought in and given 5 minutes to respond to a list of possibilities that are issued, it just doesn't work. That's nobody's definition of cooperation.

And the States are the ones with the boots on the ground. They have their own processes to deal with the very issues that you are trying to rectify.

And so I'm just admonishing you in a nice way, because I know you're trying, and I know that a lot of this happened under a previous Secretary. But what you've done with this rule is not cooperating agencies between the Federal Government and the States. It's just a check-the-box, and the process is really broken.

We were broken around here. We're fixing ourselves under Speaker Ryan. And so I know you can do it. If we can do it, you can do it. And I know I sound like a weight-loss ad when I say that, but government agencies can reform themselves.

So, with that, I would recognize the gentleman from Colorado, Mr. Buck, for 5 minutes.

Mr. BUCK. I thank the chair, and I have no questions.

Mrs. LUMMIS. The chair recognizes the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. GOSAR. Hi, Ms. Schneider. I'm from Arizona, a State with a rich history and expertise in mining. Arizona is sometimes called

the Copper State. It is well-known because it's a leader in copper mining.

While many don't consider Arizona to be a coal State, Arizona generates 40 percent of its electricity from coal and produces more than 8,000 tons of coal a year. Coal mining in Arizona supports approximately 4,000 jobs state-wide.

Arizona is also known for its water or sometimes lack thereof. The State is home to hundreds of dry rivers—streams that appear in a flash during a rainstorm and disappear as fast as the clouds change. These are also called ephemeral streams, though the exact definition of what that means varies widely.

The SPR adopts the EPA's overreaching definitions of streams developed for the waters of the U.S. rule, which has been blasted by its many authors for serious scientific and legal deficiencies. This committee has heard testimony under oath regarding the dubious and questionable science of the waters rule. In fact, the scientific foundation of the waters rule is in such shambles that the rule has been stopped nationwide by a Federal appeals court.

Now, Ms. Schneider, did the Department or Office of Surface Mining conduct its own analysis of a definition of ephemeral streams or adopt the EPA's definition outright? Which one was it?

Ms. SCHNEIDER. Thank you for that question.

The proposed rule does not adopt the EPA waters of the United States——

Mr. GOSAR. So you did your own?

Ms. SCHNEIDER. —definition.

No, we used the Corps of Engineers' definition under its nationwide permit program.

One of the things that we wanted to do was to make sure there weren't a whole bunch of new definitions for people to have to grapple with, and to try to use a consistent set of definitions. In discussions with stakeholders, most agreed that the U.S. Army Corps of Engineers' definition in the nationwide rule would be the one that makes the most amount of sense because, at the end of the day, the Army Corps would be the one determining whether there was a jurisdictional water of the United States.

Mr. GOSAR. So, then, who made the decision to base the SPR on science underlying a rulemaking that's not yet final?

Ms. SCHNEIDER. We did not. Those rules are adopted every 5 years. Those rules are final and are in place.

Mr. GOSAR. So who actually made that decision?

Ms. SCHNEIDER. I made that decision.

Mr. GOSAR. Okay.

Now, do you intend to implement the SPR if questions regarding the scientific basis for the clean water rule remain unresolved?

Ms. SCHNEIDER. Again, the proposed SPR does not adopt the waters of the United States rule that is in——

Mr. GOSAR. So you're going to go ahead?

Ms. SCHNEIDER. Well, we have a proposed rule on the street. We're taking comments on whether stakeholders—we've taken comments, I should say, on whether stakeholders think that our proposal to use the Corps' definition in its nationwide permit program is an appropriate——

Mr. GOSAR. So you do intend to implement the SPR if the clean water rule is overturned by the courts?

Ms. SCHNEIDER. It has not been overturned by the courts, and it's not under challenge. The definition that we're proposing to use——

Mr. GOSAR. But if it is overturned by the courts, you're going to go forward?

Ms. SCHNEIDER. And so we'll take a look at the public comments and get a sense of whether folks think that is the appropriate approach to take or not.

Mr. GOSAR. Okay.

And, in your experience, you would say, yes, go forward? I mean, it seems like you want to propose the rule——

Ms. SCHNEIDER. No, I want to make sure I understand what the comments from the stakeholders say——

Mr. GOSAR. Yeah. If they——

Ms. SCHNEIDER. —before I make any decisions on a particular direction to go forward in.

And I have a very open mind about this process. I think it's a good process. We've gotten over 94,000 comments on the proposed rule, and, you know, we're still in the process of going through all of those.

But I want to make sure that I personally understand those comments before I'm in a position to say I want to go forward with a particular approach.

Mr. GOSAR. Madam Chair, I have another section, so I'll wait for another chance, a turn, before I get started with my next line.

Mrs. LUMMIS. The chair now recognizes the gentleman from, Mr.—excuse me, from Ohio, Mr. Johnson, who is not a member of the Oversight Committee. We thank him for his interest in this hearing topic. And I would ask unanimous consent that Mr. Johnson be allowed to fully participate in today's hearing.

Without objection, so ordered. With that, Mr. Johnson, you are recognized for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chairman. And, Ms. Schneider, thanks for joining us today. I know that you're here to try and shed light on this very, very important topic. I've been involved in the discussion and the debate on the stream protection rule now for almost 5 years myself. I think that may even be longer than when you got involved with it.

Ms. SCHNEIDER. Yes, that would be the case, sir.

Mr. JOHNSON. What I would like to do, because we're going to get into some topics of detail here, can we have an agreement because we're both looking to find the truth, if I ask you a question and you don't understand the question, just ask me to clarify the question. Because I'm going to be asking you a number of questions. Is that an agreement that you and I could go forward with?

Ms. SCHNEIDER. Yes, sir.

Mr. JOHNSON. Okay. Great. Assistant Secretary Schneider, you know, OSM's own internal analysis of an earlier and much more modest version of the stream protection rule showed that more than 7,000 coal mining jobs, coal miners would lose their jobs in 22 States. Now, Secretary Jewell claims that the new rule will cost approximately 200 miners their jobs, despite the fact that this new

rule now amends or modifies 475 existing rules and adds new rules on top of that. Furthermore, Secretary Jewell defines these job losses as minor.

In my view, if there is one coal miner in my district that is highly dependent upon coal for their livelihood, if there's one coal miner that loses their job, it's too many. And we got an independent analysis derived from data gathered at 36 operating mines, not hypothetical model mines, but operating mines, that puts the job loss estimate at upwards of 80,000 coal miners with this rule.

Now, I understand that OSM determined that job loss will be minimal because, supposedly, according to the Secretary, high-wage coal jobs would be replaced by jobs created just to comply with its rule, with this rule. So let's say, for a second, let's just say that that is true. Where would these new jobs be created?

Ms. SCHNEIDER. Thank you for that question. Let me just step back and respond to a couple of things that you said.

Mr. JOHNSON. No, I want you to answer my question, Ms. Schneider. That was the agreement we had. Where would these jobs be created? Would they be created in the communities where the coal miners lost their jobs or would they be created somewhere else?

Ms. SCHNEIDER. The jobs that would be, that we are, as I understand the analysis, the jobs that would be created would be created in the coal communities.

Mr. JOHNSON. Ms. Schneider, there's no industry in those coal communities except those coal mines. So what kind of high-paying jobs would be created in those communities where there's no industry other than coal production?

Ms. SCHNEIDER. I'll give you, let me, if I may, give you an example. One of the proposed, and, again, I stress these are proposed provisions, but one of the proposed parts of the rule would provide for increased materials handling and placement of coal refuse. So things like shoot and shove would no longer be allowed. Instead, individual heavy——

Mr. JOHNSON. How many——

Ms. SCHNEIDER. Sir, if may I finish.

Mr. JOHNSON. I've got limited time.

Ms. SCHNEIDER. We have heavy machinery operators——

Mr. JOHNSON. Ms. Schneider, I've got limited time. I've got limited time.

Ms. SCHNEIDER. —would be the ones doing that——

Mr. JOHNSON. I've got limited time. We had an agreement, if you don't understand the question, ask. I asked you where would the jobs be created?

Ms. SCHNEIDER. They would be materials handling jobs. They would be——

Mr. JOHNSON. I didn't ask you what kind of jobs. I asked you where would the jobs be created?

Ms. SCHNEIDER. In the communities where there are coal mining operations.

Mr. JOHNSON. Have you visited operating coal mines?

Ms. SCHNEIDER. Yes, sir, I have.

Mr. JOHNSON. You have. And you know what those communities look like?

Ms. SCHNEIDER. Yes, sir, I have.

Mr. JOHNSON. Okay. Well, then I defer to you on that one. Because I visited them too. And these high-paying jobs that you're talking about replacing would not be the case.

One final quick question, does—and going back to what my colleague from Arizona was asking, does the stream protection rule adopt the definitions of streams, including ephemeral streams that are included in the EPA's clean water rule?

Ms. SCHNEIDER. No, sir. My understanding is that we propose to use the U.S. Army Corps of Engineers definition and its nationwide permit program.

Mr. JOHNSON. Where does the Army Corps get their rule? Did the EPA get their rule from the Army Corps?

Ms. SCHNEIDER. No, sir. My understanding is that the Corps every 5 years issues new regulations, identifying nationwide permits under section 404 of the Clean Water Act. That's my understanding of the——

Mr. JOHNSON. You're telling me that there is no consistency between the rules of the waters of the U.S. and the EPA and the definition of streams as contained in the stream protection rule?

Ms. SCHNEIDER. Our approach to consistency is to make it consistent with the Army Corps' regulations, sir.

Mr. JOHNSON. And that the Army Corps is different than the EPA clean water rule? Is that your assertion?

Ms. SCHNEIDER. I'm not sure I understand your question.

Mr. JOHNSON. I'm asking you does the stream protection rule use the same definition for streams, including ephemeral streams, that the waters of the U.S., that EPA's rule does? Wherever it's derived from, are they the same?

Ms. SCHNEIDER. To the best of my knowledge here today, I do not believe that's the case.

Mr. JOHNSON. Would you take that question and get back to the committee?

Ms. SCHNEIDER. We will do that yes.

Mr. JOHNSON. Because my concern is this, there's been a Federal stay on waters of the U.S. rule by the EPA, the clean water rule. My question would be what would happen to the stream protection rule if that rule is determined to be illegal by the Federal courts? Where does that leave the stream protection rule? So would you take that question for the record as well?

Ms. SCHNEIDER. Yes, sir, we will.

Mr. JOHNSON. Thank you very much. Madam Chair, I yield back.

Mr. BUCK. [presiding.] The gentleman yields back. The chair recognizes the gentleman from Arizona.

Mr. GOSAR. Thank you again, Chairman. In addition to copying flawed definitions from the court to stayed Lotus rule, the SPR, or the stream protection rule, simply duplicates existing regulations and programs from other agencies. Even in Washington, a city known for ego and Tudor floors, the stream protection rule is a shameless attempt by OSM to take over the roles of the EPA, the Army Corps of Engineers, and, most egregiously, States as the primary protector of water. The rulemaking process behind the SPR, the stream protection rule, exposes the pursuit to more about ex-

tending the agency's bureaucratic reach than improving the environmental performance.

Now Ms. Schneider, as I said before, coal mining supports 4,000 jobs in my State which are threatened by this onerous rule. So how can OSM officials justify such a politically motivated, scientifically questionable rule that is clearly more about protecting your job in Washington than improving the quality of life for everyday Americans?

Ms. SCHNEIDER. There is no intent or provision in the proposed rule that would take over the EPA program, the Corps program, or State programs. I do think that there has been some confusion about our proposed definition of material damage to the hydrologic balance and what that would require. I think that——

Mr. GOSAR. And do you see why there's that confusion?

Ms. SCHNEIDER. Well, you know, I think that this is what this process is all about. You know, we put something out on the street. We're getting good comments back on that. But, you know, we're, you know, the States under our proposed rule, if it goes final, the States will have plenty of flexibility to tailor the rule to their specific needs.

Mr. GOSAR. Well, I'm glad you went that way because this is really important to my constituents. So can you tell me how many times you personally met with leaders and families from actual coal producing regions to hear their concerns?

Ms. SCHNEIDER. I cannot give you today an actual number. But I have been on numerous trips to coal country. I used to actually represent Arizona Public Service Company. So I understand very well——

Mr. GOSAR. I'm not asking for that part. I'm asking for your——

Ms. SCHNEIDER. But what I'm saying is I have worked with coal miners in my private capacity, where I was——

Mr. GOSAR. That's a little bit different than what it is under your current status.

Ms. SCHNEIDER. But it does inform how I think, frankly.

Mr. GOSAR. Well, that you have a different hat on, don't you?

Ms. SCHNEIDER. I do have a regulator's hat on. But I do understand the importance of high-wage jobs to rural communities.

Mr. GOSAR. I'll give you that so——

Ms. SCHNEIDER. So, sir, if I might finish, I have been to Appalachia. I've been down to West Virginia. I've been to Kentucky. I've been to Colorado. I've been to Wyoming. And I'm planning a bunch more trips. I do want to make sure that we get this right. And on each of those trips, I meet with multiple, multiple coal miners.

Mr. GOSAR. I got a limited amount of time. So let me redefine that a little bit.

Ms. SCHNEIDER. Sure.

Mr. GOSAR. So any time or any public comment hearings that actually occurred in coal country that you participated on or hosted?

Ms. SCHNEIDER. Yes, sir. I was actually in Gillette, Wyoming, earlier this summer for listening sessions on coal-related issues.

Mr. GOSAR. Okay. Are you prepared to assure me and members of this committee that the rule that the OSM finalizes will not lead to further job losses and economic hardship in my coal producing communities?

Ms. SCHNEIDER. We are going to take public comment on the rule. We're going to get a better understanding of that. I do want to make sure that we have a fair and balanced rule that will protect jobs and also adequately protect the environment.

Mr. GOSAR. Okay. So tell me how that works in Indian Country? Tell me how you're going to, when this goes into effect, you're actually going to kill the only aspect that actually is a good producing job. What are you going to do for that?

Ms. SCHNEIDER. Well, as you know, OSM already directly regulates in Indian Country. So the big coal producing Nations are Navajo, Hopi, and the Crow. And we will work with them. I mean, just as we, as you know, there have been some recent numerous approvals, they're not numerous but there have been recent approvals to allow the Four Corners Power Plant in that Navajo and the adjacent mine to move forward and to expand.

And so I think the Department is very mindful of jobs and, in particular, jobs in Indian communities.

Mr. GOSAR. Well, but when you take a look at the effect of this rule, along with the clean power rule, along with all the rest of the regulations going forward. So you can mine coal. You won't be able to burn it. It's a very, you know, combustible type of atmosphere that you're producing here.

So I think you have a huge problem here. I don't envy you at all, particularly with how you respond. Your intentions may be well. But, you know, you're overstepping your boundaries. And that's just like EPA on a number of aspects, they have been hauled into court and they have been stayed. And I would hope that you would learn from the mistakes, the past mistakes of this administration and rescind this rule. And I yield back. Thank you very much.

Mrs. LUMMIS. [Presiding.] The chair now recognizes Ms. Norton for 5 minutes.

Ms. NORTON. I thank the chair. I'm sure everybody wants to mitigate the effects of what I understand the peer-reviewed studies have found. Is it true that near the sites of the mountain-top removal of coal mining—and this figure seems to me to be quite amazing. People living near those sites are 50 percent more likely to die of cancer, and 42 percent are more likely to be born with defects, compared with people who do not live near the sites of mountain-top removal for coal mining? I mean those are amazing statistics. Everybody ought to move now.

Ms. SCHNEIDER. Congresswoman, I'm not familiar with those particular statistics. I have been to West Virginia and seen the effects of mountain-top mining personally. It is a bit sobering what is going on down there. We continue to see very significant adverse effects of coal mining in those communities, including, most recently, a better understanding of conductivity and selenium impacts.

You know, you go down there and you see, as Congressman Cartwright illustrated in one of his statements, I mean, the water is running orange in some of the areas that I've seen. I've seen water running white from aluminum just coming right out of the old mine, worked into a stream with a child in it, with his dog playing there. I mean, it's very sobering to see. And, obviously, we talk about the abandoned mine lands and——

Ms. NORTON. I would like staff to make sure that Ms. Schneider receives these peer-reviewed studies, because they seem to be—perhaps it is based on how proximate or how close you are. But however close you are, I've never seen such statistics.

Ms. SCHNEIDER. Yeah, I would like to see those studies. Thank you.

Ms. NORTON. They're the scariest statistics I've ever seen from peer-reviewed studies. Now this stream protection rule, of course, is about restoration of streams and aquatic ecosystems. Are there adequate protections against drinking water contamination in particular?

Ms. SCHNEIDER. Well, ultimately, we believe that if you have clean water, that you will also have cleaner drinking water. And so that's part of our unquantified but anticipated benefits as part of the rule. And what we have here are rules that are over 30 years old. That's what we're trying to update as part of our modernization process. And clearly, science and technology have changed over the last three decades. There are much more modern mining practices. And we want to make sure those are put into place to protect local communities.

Ms. NORTON. Let me read to you what one study that was published in a journal, Environmental Science and Technology, said, and I'm quoting from them, "Overall, the data show that mitigation efforts being implemented in southern Appalachia coal mining are not meeting the objectives of the Clean Water Act to replace lost and degraded systems." And then another scientific publication says about the same thing, "To date, mitigation practices and restoration efforts have not been effective in ameliorating water pollution from mountain-top removal sites." Are you familiar with these studies? And how does this rule pertain to these studies about failure to be effective?

Ms. SCHNEIDER. The studies that I'm familiar with make similar types of findings, which is that we could be doing a much better job at restoring these areas. The proposed rule does contain provisions to address that.

Ms. NORTON. Are there any penalties for companies who fail to restore stream function that they have contaminated?

Ms. SCHNEIDER. Well, most of the programs are handled at the State level with oversight. There are civil penalty provisions and other oversight mechanisms that we can use if the terms of permits are violated. But the States typically would have the first run at that.

Ms. NORTON. We are all very sensitive to jobs, particularly after the Great Recession. But I certainly hope these areas—that someone in these areas is looking to not only what coal mining is doing to health, but to the fact that it's becoming less and less useful. We can't even use oil. We're not using coal mining. Those who are spending their time trying to save those jobs instead of looking for new areas to make jobs in such States and localities seem, to me, to be doing a grave disservice to the people who live there. Risking their health for a form of energy that is going down, down, down, and out as we speak, not because of hearings in the Congress but because of competition from other forms of energy. Thank you very much, Madam Chair.

Mrs. LUMMIS. If Mr. Palmer has any questions, he will be recognized.

Mr. PALMER. Thank you, Madam Chairman. I do have something that I want to say about this.

Ms. Schneider, we've seen time and time again, this administration has aggressively pursued this rulemaking driven by political timelines and special interests with reckless disregard for the law and the negative impact it will have on the rural jobs. In the past 7 years, since 2009, the Federal District Court found that the administration unlawfully attempted to bypass the Administrative Procedure Act, when it proposed withdrawing the 2008 stream buffer rule.

In 2010, OSM entered into agreements with 10 States to act as cooperating agencies under NEPA and then shut the States out of the rulemaking process for 5 years. As a result, 8 of the 10 States terminated the agreement with OSM.

In 2011, OSM tried to cover up the findings from one of the contractors who proposed, that the proposed rule would result in the loss of thousands of jobs, investigations by the Interior inspector general. And the House Natural Resources Committee confirmed the coverup.

OSM ignored a bipartisan letter sent by 33 Senators asking that the public comment period be extended an extra 120 days in consideration of the thousands of pages of technical material related to the rule. Given this rule's checkered history, how can the American public have confidence in the integrity of it?

Ms. SCHNEIDER. We are working hard to make sure that we have a good process, particularly on a going-forward basis. We have a, you know, we're reviewing the public comments now. There's roughly 94,000 public comments. The public comment period was open for approximately 3 1/2 months. We did grant an extension in response to the extension request as part of that process.

So, you know, we are committed to making sure we have a good process. I am personally committed to making sure that we have a good process. And, you know, the responses that we've been getting so far, particularly from the State agencies that we're engaging with on a one-on-one basis, has been very positive. And I think we'll have good outcomes. We're getting a lot of good information. And we're taking all of that into consideration as we think about making potential adjustments to what has been proposed.

Mr. PALMER. Well, I can tell you I don't have a lot of confidence in the rulemaking process at this time, and its impact that it's already had is pretty severe. If you were to come to Alabama and talk with some of the coal mining families and particularly their kids who are facing the prospect of Christmas this year with no presents, talking to families whose children are having to withdraw from college because their dad has lost his job in the coal mine, a job, a profession that they have known for 30 years. They don't know anything else.

I mean, these are not made up stats. These are real people. And I tell you it breaks my heart to see what is being done to these rural communities, seeing what's done to these families who have worked hard. They have been a critical part of our energy infra-

structure for years and years and years. And now, it really, at the end of their careers, losing their jobs.

So, Ms. Schneider, with all due respect, I have some serious reservations about the rulemaking process.

And, Madam Chairman, I hope that this committee will be engaged in the process to ensure that the rulemaking process is handled in a better matter. I yield the balance of my time.

Mrs. LUMMIS. The chair now recognizes herself for 5 minutes. And unless another member comes in, I'll be wrapping up. We've had several questions today about this inspector general's report that was produced in February of 2013. Are you aware of that report?

Ms. SCHNEIDER. Yes. I've read the redacted version of the report.

Mrs. LUMMIS. But not the unredacted version?

Ms. SCHNEIDER. No.

Mrs. LUMMIS. And why is that?

Ms. SCHNEIDER. I read the redacted version of the report in preparation for my confirmation hearing. It had just been issued. And I had the opportunity to review the deputy inspector general testify about the report in which he found that there was no undue political influence with respect to the job numbers that were evaluated in that report. He also, as I recall, testified that the contractors were not fired. Rather, they were, their contract was not renewed. So as part of that confirmation process, I reviewed that material.

Mrs. LUMMIS. And if that's true, then there should be no problem releasing the unredacted version. Because, like you, we have never seen the unredacted version. Can you promise today to release the unredacted IG's report?

Ms. SCHNEIDER. What I can commit to you today is taking that request back to the Department and to work with the committee through the accommodations process.

Mrs. LUMMIS. And the committee staff will follow up with you on this subcommittee's behalf to obtain a copy of the unredacted IG's report.

Mrs. LUMMIS. Since there's such a difference of opinion about what transpired with regard to the job numbers, we feel that it would be important to clear it up by seeing the unredacted IG's report.

My next question is about the process going forward. Since we have States that felt that the cooperating agency status that was afforded them was so inadequate as to not constitute cooperating agency status, therefore, they withdrew from the agreement to be cooperating agencies, the one State that remained, Wyoming, has acknowledged it remained only so it could reserve its right to litigate, not a very strong endorsement of the process either.

What can be done to restore cooperating agency status with regard to this rule going forward in this rulemaking process?

Ms. SCHNEIDER. Thank you for that question. We have invited all of the prior cooperating agencies to reengage with us as cooperating agencies in the future. Today, none of them have chosen to take us up on that. I would strongly encourage them to participate in that. I want to engage with them. If they're cooperating agencies, we have an opportunity to engage with them in a broader capacity.

I mean, I have an open door policy. I was just, you know, the American Mining and Exploration Association just—at their annual meeting where I was the keynote just last week, issued a press report praising me on my open door policy. So I'm ready to listen. And I want to listen. But, you know, folks on the other end need to engage as well. Some have actually declined expressly the opportunity to engage with us. I think that's a shame. We're going to keep trying. I'm not going to take no for an answer because I think that getting this right is the most important thing.

Mrs. LUMMIS. Would you, in doing so, be willing to suspend timelines for implementation or releasing a final rule so you would have an opportunity to garner true cooperating agency status from the 9 of the 10 States that withdrew from the process?

Ms. SCHNEIDER. I would not be willing to suspend the process right now. I think that there's plenty of time in the process. One of the things that I've learned in the rulemaking process is it takes a really long time. And so I do feel that there's adequate time for those States to reengage. And I would encourage them to do so.

Mrs. LUMMIS. And when do you anticipate issuing a final rule?

Ms. SCHNEIDER. It's difficult to say given how much process we have to go through. And we're still working through the comments. Until we get through those comments, I would be reluctant to say. But I would hope sometime in late 2016. But, you know, it would probably be premature for me to say anything definitive until we get through the comments.

Mrs. LUMMIS. While you're going through those 94,000 comments, and if you had an opportunity to reach out to these 9 of 10 States that withdrew from the process because there was no cooperation, it was a command and control process masquerading as cooperating agency status, would you reengage them in this process? You used the word future processes. And I would like to see them reengaged in this process.

Ms. SCHNEIDER. I apologize for not being clear. I mean this process going forward.

Mrs. LUMMIS. So while you're reviewing the 94,000 comments, you are willing to reengage the 9 of 10 States that chose to disengage because the process was not cooperating agency status in their minds?

Ms. SCHNEIDER. Yes, we are. And, in fact, we're meeting with several of them on the rule itself.

Mrs. LUMMIS. I appreciate your testimony today. I know that it has been challenging to get this scheduled. And it has—we have made several attempts. And you have been very cooperative in our efforts to schedule this hearing. And I want you to know how much I appreciate it.

Given the fact that there are no further questions, we will make our final thank you to the witness for taking the time to be with us today. And there appearing to be no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 4:00 p.m., the subcommittees were adjourned.]

APPENDIX

Material Submitted for the Hearing Record

STATE OF ALABAMA
SURFACE MINING COMMISSION
P.O. BOX 2390 - JASPER, ALABAMA 35502-2390
(205) 221-4130 • FAX: (205) 221-5077

February 10, 2015

Joseph Pizarchik
Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

Dear Director Pizarchik:

On August 24, 2010, the Alabama Surface Mining Commission signed a Memorandum of Understanding (MOU) to participate as a Cooperating Agency in the development of an Environmental Impact Statement (EIS) to support a proposed stream protection rule. Since that time we have participated diligently in that process, but with increasing concern and reservation.

We and other state cooperating agencies have expressed concerns regarding the piece-meal approach, the lack of adequate time for review and comment, the overall quality of the product, major deficiencies, inconsistencies, and missing reference material evidenced in the draft documents. Federal cooperating agencies have verbally echoed similar concerns during reconciliation conference calls. Almost four years have now passed since our last interaction on the EIS.

I have concluded that it is no longer in the best interest of the Alabama Surface Mining Commission to continue as a cooperating agency. I hereby give notice to you of my decision to terminate the MOU. I request that any references to our participation as a cooperating agency be removed from the proposed EIS and its notice prior to publication in the Federal Register.

Sincerely

Randall C. Johnson
Director

Michael R. Pence, Governor
Cameron F. Clark, Director

DNR Indiana Department of Natural Resources

14619 West State Road 48
Jasonville, IN 47438-7056
July 7, 2015

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

Dear Director Pizarchik:

On August 25, 2010, the Indiana Department of Natural Resources signed a Memorandum of Understanding with the Office of Surface Mining to participate as a Cooperating Agency in the development of an Environmental Impact Statement for a proposed stream protection rule. Nine other states also signed on as cooperating agencies.

As you are aware, OSM began sharing draft chapters with the states in the fall of 2010 and early 2011. In each case, comment periods were exceedingly short and while "reconciliation meetings" were supposed to be held on each of the chapters, only one such meeting was held. Following OSM's receipt of state comments on the third chapter in January of 2011, no additional outreach to the cooperating agency states has occurred.

In November 2010 cooperating agency states wrote a letter to OSM expressing concerns with the EIS process. OSM responded with renewed commitments regarding continued participation with the states. However, not long after that commitment OSM terminated states involvement without explanation. In July 2013 another letter was sent by the states to OSM in an effort to re-engage in the process. OSM did not respond to that letter, and OSM has provided no further opportunities for participation.

I attended the briefing OSM held for cooperating states in Baltimore and I remain disappointed in the process. By OSM's own admission the draft EIS has changed significantly from what was initially shared with the states. In the MOU, OSM pledged to provide the Cooperator the opportunity to review drafts to allow a determination that comments provided by Indiana were accurately represented. This clearly has not happened. Indiana actively participated when given the chance. However, OSM's unwillingness to share revised and new draft chapters of the EIS has precluded us from doing so and has undermined our status as a cooperating agency as well as the meaningfulness of our participation. As such, I have determined that it is no longer in the interest of the Indiana Department of Natural Resources to continue as a cooperating agency. Pursuant to Section B of the MOU, IDNR hereby provides notice that it is terminating the MOU, effective thirty (30) days from the date of this letter. I also insist that any reference to our participation as a cooperating agency be removed from the proposed EIS and any published notices in the Federal Register.

Should you have any questions or need further clarification, please do not hesitate to contact me.

Sincerely,

Steven J. Weinzapfel
Director
Division of Reclamation

SJW/tam
Cc: Jasonville File

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES

Steven L. Beshear
Governor

2 Hudson Hollow
Frankfort, Kentucky 40601
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Leonard K. Peters
Secretary

Steve Hohmann
Commissioner

May 13, 2015

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

RE: Termination of MOU as a Cooperating State Agency

Dear Director Pizarchik:

This letter serves as the required thirty (30) day notice informing the Office of Surface Mining Reclamation and Enforcement (OSMRE) that Kentucky is terminating its cooperating agency status pursuant to the Memoranda of Understanding with your agency signed on August 24, 2011. The MOU with OSMRE engaged Kentucky as a cooperating agency under the National Environmental Policy Act (NEPA) for the development of a draft environmental impact statement (EIS) which is to accompany a proposed rule on stream protection. OSMRE has stated the rule is likely to be published sometime this year.

The MOU states that "OSM will provide the cooperator with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EIS". However, OSMRE has had little to no interaction with Kentucky, or other cooperating agency states, concerning the draft EIS since January 31, 2011. Over the past four years the only information we have received from OSMRE was an updated estimate of the anticipated release date for the proposed rule and draft EIS twice per year at Interstate Mining Compact Commission meetings. Those "updates" did not include documents, reports, information, or data for us to review or analyze.

Based on your briefing to the cooperating state agencies on April 27, 2015 in Baltimore, we learned OSMRE has revised the draft EIS by adding a number of additional alternatives, and the draft EIS has been significantly changed in other respects since the last time we reviewed it in 2011. However, Kentucky and the other cooperating agency states have not been afforded the opportunity to provide review and meaningful input concerning the new alternatives or any of the significant changes. In fact, you informed us that the cooperating agency states would not be offered any future opportunities to review the draft EIS and that we would see it when it is published for public comment. And although you stated that your agency may contact the cooperating agency states "if needed" after the public comment period closes, it is very difficult to envision that happening given the absence of outreach from OSMRE over the past four years.

Kentucky believes OSMRE's continued refusal to share the revised draft chapters of the EIS with us has undermined our status as a cooperating agency and severely curtailed the meaningfulness of our participation. We have therefore concluded that it is no longer in the best interest of the Commonwealth of Kentucky to continue as a cooperating agency. We request that you remove any references to our participation as a cooperating agency from the proposed EIS, and that our state seal not appear on the cover of the draft EIS prior to publication in the *Federal Register*.

Sincerely,

Steve Hohmann

Steve Hohmann
Commissioner

west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE, Charleston, WV 25304
Phone: (304) 926-0490 Fax: (304) 926-0456

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

May 19, 2015

The Honorable Joseph G. Pizarchik, Director
Office of Surface Mining
U.S. Department of Interior
1951 Constitution Avenue, NW
Washington, DC 20240

Re: Cooperating Agency Status

Dear Director Pizarchik:

It is with disappointment, the West Virginia Department of Environmental Protection (WVDEP) informs you that WVDEP terminates its cooperating agency status with the Office of Surface Mining Reclamation and Enforcement (OSM) in the preparation of a draft Environmental Impact Statement (EIS) as outlined in the "Memorandum of Understanding between OSM and WVDEP for EIS activities under NEPA for Stream Protection rulemaking".

In August 2010, WVDEP signed the MOU with OSM in good faith, fully expecting to be engaged with OSM as the lead agency proceeded with the development of the draft EIS, described in the MOU. However, OSM has consistently failed to meet the terms of the MOU and related federal regulations regarding cooperating agency status.

As we learned at a recent briefing by OSM on the EIS preparation and proposed rulemaking on April 27, 2015, OSM has, among other things, substantially revised the draft EIS to expand the range of alternatives from four to nine, selected a preferred alternative and gone beyond the original scope in examining the federal stream buffer zone rule. These revisions were undertaken without meaningful input from West Virginia and other states that agreed to participate in the EIS as cooperating agencies. At this same briefing, OSM informed the cooperating agencies there would be no further opportunities for cooperation , unless OSM needed information in response to public comments, and the states would see the draft EIS once it is published for public comment.

Because of the lack of fundamental engagement, WVDEP believes it is no longer in the best interest of the environmental regulatory programs it implements and the State of West Virginia to continue as a cooperating agency.

It is requested that references indicating WVDEP as a cooperating agency be removed from any published draft EIS as well as related documents. It is also requested that the WV state seal not appear on the cover or within the draft EIS or publication of it in the *Federal Register*.

WVDEP values its working relationship with OSM and looks forward to cooperating with OSM and all federal agencies in order to accomplish effective environmental regulation for stream protection and all other matters even though it is regrettable WVDEP will participate in this matter as something other than a cooperating agency.

Sincerely,

Harold D. Ward
Acting Director

DEQ
Montana Department of Environmental Quality

July 9, 2015

The Honorable Joseph G. Pizarchik, Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

Dear Director Pizarchik:

I am writing to you today to request that the Montana Department of Environmental Quality (MDEQ) cease to be considered a cooperating agency on the Stream Protection Rule Environmental Impact Statement (EIS). To clarify the record, on August 30, 2010, I sent John Craynon, Chief of OSMRE's Division of Regulatory Support, an email identifying that MDEQ was very interested in becoming a cooperating agency on the aforementioned EIS. However, due to Montana's public records disclosure laws, MDEQ requested specific modifications be made to the proposed Memorandum of Understanding. MDEQ never received a response to that email/request for modification to the MOU, but MDEQ was subsequently treated as a cooperator, so we actively participated.

The first chapter of the draft EIS (Chapter 2) was shared with MDEQ for comment in September of 2010. Chapter 3 was shared in October of 2010 and Chapter 4 was shared in January of 2011. To the best of my knowledge, January of 2011 was the last time MDEQ or any of the other cooperating agencies had the opportunity to provide comment on the draft EIS. Furthermore, it has been indicated that MDEQ would not be provided an opportunity to view or comment on the revised draft EIS until it is released to the public. Based on MDEQ's limited ability to participate in the process, we would no longer like to be considered a cooperating agency.

Thank you for your time and please feel free to contact me if you have any questions.

Sincerely,

Edward L. Coleman
Chief, Industrial and Energy Minerals Bureau
Department of Environmental Quality
(406) 444-4973; Fax (406) 444-4988
ecoleman@mt.gov

State of New Mexico
Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

David Martin
Cabinet Secretary

Brett F. Woods, Ph.D.
Deputy Cabinet Secretary

February 20, 2015

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

RE: September, 2010 Memorandum of Understanding, For EIS Activities Under NEPA for Stream Protection Rulemaking: Notice of Termination

Dear Director Pizarchik:

I am Secretary of New Mexico Energy, Minerals and Natural Resources Department ("EMNRD"), a cooperating agency under the above referenced Memorandum of Understanding ("MOU"). The MOU sets forth the respective responsibilities of the Office of Surface Mining Reclamation and Enforcement ("OSM") and EMNRD in the development of an environmental impact statement ("EIS"), which is being undertaken in service of a rulemaking on stream protection. The rule is contemplated as a replacement for the 2008 stream buffer zone rule. Several other coal-producing states have entered into similar Memoranda of Understanding.

The first chapter of the draft EIS (Chapter 2) was shared with the states for comment in September of 2010. Chapter 3 was shared with the states in October of 2010. Chapter 4 was shared with the states in January of 2011. In each case, comment periods were exceedingly short. Additionally, reconciliation meetings were supposed to be held on each of the chapters, but only one such meeting was held. Following the receipt of state comments on Chapter 4 in January of 2011, OSM made no further contact with EMNRD. Since that time, OSM has significantly revised each of the chapters, and it is our understanding that several new alternatives are being considered, as well.

On two occasions, several of the cooperating agency states sent letters to OSM, expressing concerns with the EIS process and the states' role as cooperators. Those letters were dated November 23, 2010 and July 3, 2013, and we direct your attention to them. In the first letter, the states expressed concerns about the quality, completeness and accuracy of the draft EIS; the

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abbreviated timeframes for the submission of comments on draft EIS chapters; the reconciliation process; and the need for additional comment opportunities on revised chapters.

Following several fits and starts by OSM—largely due to the work of contractors that OSM had hired—in the July 3, 2013 letter the states requested an opportunity to re-engage in development of the EIS. The states asked for an opportunity to review revised draft chapters of the draft EIS, with expanded timeframes sufficient for comment; an opportunity to review any attachments and exhibits to the chapters; and a meaningful, robust reconciliation process. To date OSM has provided no further opportunities for participation by EMNRD or other cooperating agency states.

From the date that the MOU became effective, EMNRD has been able and willing to meet all of its responsibilities as a cooperating agency. Unfortunately, the absence of meaningful opportunities for EMNRD to participate in the EIS process has frustrated the purpose of the MOU and has undermined EMNRD's status as a cooperating agency.

Pursuant to Section C.2. of the MOU, EMNRD hereby provides notice that it is terminating the MOU as of thirty (30) days from the date of this letter. Further, we request that neither the New Mexico Energy, Minerals and Natural Resources Department nor its Mining and Minerals Division be identified by name or by logo as a cooperating agency within the draft EIS.

Termination of the MOU is not intended to imply EMNRD's disagreement with the eventual draft EIS or the eventual stream protection rule. EMNRD has not been provided with information sufficient to form a considered opinion on either the draft EIS or the eventual rule.

We hope that we are able to work with OSM on more successful ventures in the future.

Very truly yours,

David Martin

David Martin
Cabinet Secretary
Energy Minerals and Natural Resources Department
State of New Mexico

CHRISTI CRADDICK, *CHAIRMAN*
DAVID PORTER, *COMMISSIONER*
RYAN SITTON, *COMMISSIONER*

JOHN E. CAUDLE, P.E., *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION

March 12, 2015

Sent by Email and First Class Mail
Joe Pizarchik, Director
Office of Surface Mining Reclamation and Enforcement
1951 Constitution Avenue, NW, MS 202-SIB
Washington, DC 20240

RE: Notice of Termination of Memorandum of Understanding as a Cooperating Agency
Draft Environmental Impact Statement for the Proposed Stream Protection Rule

Dear Director Pizarchik:

On August 25, 2010, I signed, on behalf of the Surface Mining and Reclamation Division of the Railroad Commission of Texas, a Memorandum of Understanding (MOU) to act as a cooperating agency in the development of an Environmental Impact Statement (EIS) in support of a proposed change to OSMRE's rules on stream protection. We participated in the review of three draft chapters of the proposed EIS in 2010 and 2011 even though we were afforded very short review times. We also participated in the one reconciliation conference call that was held after cooperating agency comments were received from review of the first chapter (Chapter 2). After receiving Chapter 4 for review, no further documents were shared with cooperating agencies for review and comment. I understand that, even though there has been no sharing of documents with cooperating agencies, OSMRE has continued to work on the draft EIS and that alternatives are being considered other than those shared with cooperating agencies in 2010 and early 2011.

By letters dated November 23, 2010 and July 3, 2013, I and several other cooperating agency representatives expressed frustration with the EIS process and our roles as cooperating agencies. In the July 3rd letter, we asked for an opportunity to re-engage with OSMRE in the development of the EIS. To date, OSMRE has not provided any opportunities to the cooperating agencies for further participation in the EIS process.

I entered into the MOU in good faith, fully able and willing to participate in review of the draft EIS and provide comments on the chapters that were made available for review. I remained committed to this task throughout 2011 until now, in 2015. At this time, however, I feel that OSMRE's failure to allow further participation of my agency in the process constitutes just cause for termination of the MOU. In accordance with the *Terms and Conditions* of the MOU, I am providing you the required 30-day notice that the Surface Mining and Reclamation Division of the Railroad Commission of Texas is terminating its participation in the EIS process under the MOU. I also request that OSMRE not identify either the

Surface Mining and Reclamation Division or the Railroad Commission of Texas by name or seal as cooperating agencies when the draft EIS is published.

I am committed to further participation in review of the draft EIS once it is published. I am hopeful that the lack of engagement with the cooperating agencies is not an indication that OSMRE does not desire cooperation with State regulatory authorities in the EIS process. I remain available for future discussions on this issue if OSMRE were to provide a meaningful opportunity for such discussions.

Sincerely,

John E. Caudle

John E. Caudle, Director
Surface Mining and Reclamation Division

pdfc: Ervin Barchenger, Director, Mid-Continent Region, OSMRE
Elaine Ramsey, Director, Tulsa Field Office, OSMRE
Greg Conrad, Executive Director, IMCC
Milton Rister, Executive Director, RCT

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

February 23, 2015

The Honorable Joseph G. Pizarchik, Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

SUBJECT: NOTICE OF TERMINATION OF MOU BETWEEN OSM AND UTAH DOGM FOR EIS ACTIVITIES UNDER NEPA FOR STREAM PROTECTION RULEMAKING

Dear Director Pizarchik:

In September of 2010, the Utah Division of Oil, Gas and Mining (the Division) entered into a Memorandum of Understanding with the Office of Surface Mining Reclamation and Enforcement (OSM). The MOU designated the Division as a cooperating agency under the National Environmental Policy Act (NEPA) and the Council of Environmental Quality's (CEQ) regulations and guidance. Specifically, it established responsibilities for both agencies regarding preparation of the environmental impact statement (EIS) concerning OSM's ongoing stream protection rulemaking.

Both NEPA itself and CEQ's implementing regulations and guidance recognize the benefits of enhanced agency cooperation. The Division also recognizes the mutual benefit conferred by engaging federal agencies as a stakeholder in the regulatory process. Since signing the MOU however, the Division has become increasing frustrated with OSM's reluctance or refusal to cooperatively engage with the Division. OSM has consistently failed in its obligations under the MOU and under CEQ regulation.

For instance, the Division understands from sources outside OSM that the draft stream protection rule and its associated draft EIS will be released this year. However, OSM has not contacted the Division about the EIS since January 2011, even though the review process has been ongoing. Additionally, OSM has never given the Division enough time to participate in a meaningful review of the EIS. As just one example of the compressed review schedule, OSM gave the Division only five business days to reply and comment on draft Chapter 3 of the EIS. The draft of that

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chapter was 961 pages long. As you know, it is impossible to provide substantive comments on a document of that length in such a constricted time period.

The benefits of cooperation envisioned by CEQ are nonexistent when OSM fails to provide a meaningful opportunity for the Division to actually cooperate. Because it has had no opportunity to contribute, the Division does not wish to ratify the draft EIS by signing on as a cooperating agency. Further, the Division wishes to remove its name from the EIS undertaking to protect the general public and Utah's citizenry from the incorrect assumption that the Division actually took part in the EIS's development.

As CEQ's guidance articulates, OSM's failure to engage the Division constitutes good cause to terminate the MOU and end the relationship. That said, the Division is hopeful that its experience in this case is merely an aberration. The Division hopes to cooperate with OSM in the future and remains open to future discussions and future collaboration assuming OSM were to provide meaningful opportunities for engagement.

For these reasons, please be advised that the Utah Division of Oil, Gas and Mining will terminate the referenced MOU on March 25, 2015. Also, please remove all references to the Division from the draft EIS.

Sincerely,

John R. Baza
Division Director

JRB:jrj:er

cc: Gregory E. Conrad, IMCC
Horst Greczmiel, CEQ
David Berry, OSM Western Region
Dana Dean, OGM

P:/Groups/Admin/JRB/OSM

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Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Matthew H. Mead, Governor

Todd Parfitt, Director

May 22, 2015

Mr. Joseph G. Pizarchik
Director, Office of Surface Mining Reclamation and Enforcement
U.S. Department of Interior
1951 Constitution Avenue, NW
South Interior Building
Washington, DC 20240

RE: Stream Protection Rule Cooperating Agency Status

Dear Director Pizarchik:

The Wyoming Department of Environmental Quality (DEQ) continues to be disappointed and concerned about the lack of engagement by the Office of Surface Mining (OSM) with cooperating agencies regarding the Stream Protection Rule EIS process. DEQ has joined with the other cooperating agency states on three letters to you expressing our concern and expressing our desire and willingness to engage and provide input on the Stream Protection Rule as cooperating agencies. Unfortunately, OSM has chosen to ignore the request's by states to participate as cooperating agencies.

As I noted at our April 27, 2015 meeting in Baltimore, DEQ has extensive experience partnering with federal agencies as a cooperating agency. DEQ is routinely engaged on the development of rules, EIS documents and BLM management plans for example. This experience reinforces my point that early engagement of states as well as engagement throughout the entire process results in a positive interagency relationship and a quality end product. OSM's approach was to only provide states a single review opportunity under unreasonably short deadlines in September 2010 for Chapter 2, October of 2010 for Chapter 3 and January 2011 for Chapter 4.

As stated by OSM on April 27, 2015, the early draft EIS chapters that were shared with the cooperating states in 2010 and 2011 were of poor quality and incomplete. As further explained by your staff on April 27, 2015, the most recent draft EIS (which OSM has refused to share with cooperating states) is a major change from the first draft with five (5) new alternatives in addition to the original four (4) alternatives and other significant changes.

Our experience with other federal agencies in drafting an EIS is that subsequent drafts are shared with states for additional review and input. OSM has not engaged the cooperating agencies in the EIS development since January 2011. Under no measure of "cooperation" does that lack of

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ADMIN/OUTREACH	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7758	(307) 777-6145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-7682	FAX 777-6462	FAX 777-5616	FAX 777-6971	FAX 777-5864	FAX 777-6971	FAX 777-6937

engagement honor the intent or terms of the Memorandum of Understanding (MOU) between DEQ and OSM dated August 25, 2010.

DEQ is disturbed by OSM's reluctance to allow cooperating states the opportunity to review the latest version of the Stream Protection Rule and the reluctance to honor the terms of the August 25, 2010 MOU. The state seals for cooperating agencies are normally affixed to documents when they are released for public comment. This is for the purpose of indicating that the cooperating agencies had meaningful participation in the process. Because OSM has elected not to allow meaningful participation by Wyoming on the Stream Protection Rule EIS Wyoming's state seal should not be used on or in the EIS document. Finally, I am requesting the final draft acknowledge the fact that Wyoming was not given an opportunity to review or provide comment on the Stream Protection Rule EIS since January 2011.

Sincerely,

Todd Parfitt, Director
Department of Environmental Quality

cc: Governor
Senator John Barrasso
Senator Mike Enzi
Representative Cynthia Lummis
Alan Edwards, DEQ
Greg Conrad, IMCC

Statement for the Record

Submitted by the Interstate Mining Compact Commission to the

House Committee on Oversight and Government Reform

Regarding the

Joint Hearing of the

Subcommittee on Interior and the

Subcommittee on Health Care, Benefits and Administrative Rules

"Examining the Stream Protection Rule"

December 8, 2015

Statement for the Record
Submitted by the Interstate Mining Compact Commission to the
House Committee on Oversight and Government Reform
Re. the Joint Hearing of the Subcommittee on Interior and
Subcommittee on Health Care, Benefits and Administrative Rules
"Examining the Stream Protection Rule"
December 8, 2015

The Interstate Mining Compact Commission (IMCC) respectfully submits this written statement for the record of the Committee's December 8, 2015 oversight hearing, "Examining the Stream Protection Rule."

IMCC is a multi-state governmental agency representing the natural resource and related environmental protection interests of its 25 member states. The Governors of the member states serve as Commissioners, and are represented by duly appointed officials from their Departments of Natural Resources or Environmental Protection. One of IMCC's primary roles is to coordinate the development of the member states' positions on issues related to mining and environmental protection and facilitate communication of those positions to the Office of Surface Mining (OSM).

IMCC represents many of the state regulatory authorities (RAs) with responsibility for implementing surface and underground mining regulations under the Surface Mining Control and Reclamation Act (SMCRA), including the current regulations related to stream protection. The states will also be responsible for amending and implementing their respective state regulatory programs should the proposed Stream Protection Rule (SPR) be promulgated as a final rule. This includes each of the ten states that signed Memoranda of Understanding (MOUs) with the Office of Surface Mining to serve as cooperating agencies in the development of the Draft Environmental Impact Statement (DEIS) that supports the rule under the National Environmental Policy Act (NEPA). Over the past six years, IMCC has been integrally involved in coordinating the efforts of the cooperating agency states to contribute to the development of the SPR DEIS.

IMCC wishes to provide additional information to lend clarity to discussions during the hearing, in particular with regard to OSM's ostensible efforts to consult with state regulatory authorities as cooperating agencies during the development of the DEIS related to the SPR.

Assistant Secretary Schneider stated at several points during her testimony that she believes OSM has effectively cooperated with and integrated the recommendations of state RAs throughout the development of the SPR. IMCC and the cooperating agency states continue to maintain that this is not the case. The cooperating agency states have made their dissatisfaction with the process known to OSM on many occasions through a variety of means, including: three letters directly addressing the flawed DEIS process; testimony at congressional hearings on the SPR; termination letters from several cooperating agencies regarding their MOUs; as well as verbally on many occasions

during regularly scheduled meetings and conference calls with OSM, including several at which OSM Director Joseph Pizarchik was present.

As evidence of OSM's consultation with the cooperating agency states, Assistant Secretary Schneider cited the release of chapters of the Draft Environmental Impact Statement (DEIS) to these states in 2010 and 2011. Ms. Schneider indicated that the comments received on those draft chapters were taken into account as the DEIS continued to develop.

IMCC and the cooperating agency states maintain that the release of the draft chapters does not represent meaningful consultation, firstly because only three chapters were released, which is only a portion of the entire DEIS, meaning that the cooperating agency states were not given an opportunity to comment on the DEIS as a whole. Secondly, the states were given unduly short deadlines to comment on the three draft chapters, thereby preventing them from providing the optimal level of detail in their review. Thirdly, the cooperating agency states do not feel that their comments on the limited portions of the DEIS were genuinely integrated into the proposed version. Last and most importantly, the three draft chapters came from the original version of the DEIS, which, by Ms. Schneider's own admission on several occasions during the hearing on several occasions, was significantly different from the version eventually published together with the proposed rule. (Ms. Schneider consistently cited the difference between the two versions as explanation of the variance in job loss estimates.) In summary, the states were allowed to view a limited portion of a premature version of the DEIS, which does not constitute meaningful participation from the states' perspective.

Ms. Schneider also discussed a meeting between OSM and the cooperating agency states on April 28, 2015 during IMCC's Annual Meeting in Baltimore, Maryland. In response to a question from Representative Meadows, Ms. Schneider characterized the cooperating agency states' participation in the meeting as "robust" and suggested that this was representative of OSM's consultation efforts. The cooperating agency states present at this meeting made it clear to the OSM personnel in attendance, which included Director Pizarchik, that they did not consider the meeting a meaningful consultation, but rather a briefing. The meeting did not provide the states an opportunity to substantively contribute to the DEIS and the information provided to the states was limited. The meeting proved to be of little value to the states in attendance by their own admission.

Furthermore, mere minutes before the start of the briefing in Baltimore, IMCC Executive Director Gregory Conrad was informed by Director Pizarchik that he was not invited to attend, despite OSM's full knowledge of the cooperating agency states' reliance on IMCC to facilitate consultations with federal agencies and the critical role IMCC played in coordinating the efforts of the cooperating agency states throughout the six-year process. In fact, since that meeting, OSM has neglected to communicate directly with IMCC on matters related to the SPR, preferring to circumvent IMCC's role by communicating directly with individual states. OSM's clear efforts to disenfranchise IMCC from involvement in the development of the SPR and disrupt IMCC's assistance

to the states is a clear indication of OSM's unwillingness to foster meaningful engagement with the states, as has been the case in the past.

Ms. Schneider also cited the recently scheduled set of meetings between OSM and states that submitted comments on the SPR as evidence of OSM's ongoing consultation efforts. Of the states that have so far held their meetings, each reported to IMCC that the consultation was of limited value and that they were not optimistic that their comments would be meaningfully included in the final rule. Furthermore, Director Pizarchik indicated to some of the states that these meetings covered only the SPR itself, not the DEIS or Regulatory Impact Assessment (RIA), which are critical components of the rulemaking and with regard to which the states have expressed serious concerns.

During the hearing, Ms. Schneider stated it was a "shame" that several states had declined to engage in this latest set of meetings with OSM. The states that declined did so due to legitimate concerns regarding the usefulness and appropriateness of the meetings. The states each submitted their comments on the rule to OSM during the public comment period, in many cases both as individual commenters and in support of IMCC's extensive comments. Many states believe that they adequately conveyed their comments and concerns as part of that time-consuming, albeit unduly short rulemaking process, while others have concerns that these consultations conflict with the provisions of the Administrative Procedures Act (APA) by soliciting comments from states beyond the end of the public comment period. With regard to OSM's invitations requesting reengagement with the former cooperating agency states, there are concerns that this consultation would fall outside the scope of the states' MOUs with the agency because the MOUs were related to the now completed draft EIS and because eight of the ten MOUs have been terminated and are no longer valid.

The unfortunate fact is that OSM's opportunity to garner meaningful contributions to the SPR from the state RAs has passed. This rule is critically important to and holds immense implications for the work of the state RAs, and as such, the states strove throughout the process to bring their irreplaceable, first-hand knowledge to bear on the development of the rule. OSM's failure to meaningfully consult with the states is evidenced by the fundamentally unworkable condition of many portions of the proposed rule, which reflects, as one example, OSM's lack of understanding of state-level permitting processes – the very reason that many states agreed to assist OSM as cooperating agencies to begin with. The lack of adequate consultation with the states cannot be undone through subsequent efforts to brief them or provide superficial opportunity for comment by the states on a rule that is already complete and so deeply flawed. The only way that OSM can rectify the rule's many flaws as a result of inadequate state consultation is to withdraw the rule. If, after withdrawing the rule, OSM desires to pursue rulemaking it should re-develop the rule with the benefit of the states' intimate knowledge and expertise.

IMCC appreciates the Committee's attention to this important topic and the opportunity to submit this statement.

United States Senate
WASHINGTON, DC 20510

August 7, 2015

The Honorable Joseph Pizarchik
Director
Office of Surface Mining Reclamation and Enforcement
United States Department of the Interior
1951 Constitution Avenue NW
Washington, DC 20245-0003

Director Pizarchik:

We request the Office of Surface Mining Reclamation and Enforcement (OSMRE) provide a 120 day extension to the 60 day comment period for the recently proposed "Stream Protection Rule" ("proposed rule") that would drastically change the existing stream buffer zone regulations. The current 60 day comment period is insufficient for adequate review of and comment on the proposed rule, Draft Environmental Impact Statement, and Draft Regulatory Impact Analysis, which total approximately 2,500 pages of materials. Additional time is absolutely critical to ensure that affected states, stakeholders, and the public can reasonably analyze the complex impacts that will result from the proposed rule.

The background and complexity of the proposed rule raise many potential issues that justify an extended comment period. OSMRE took more than six years to research and draft the proposed rule based on "advances in science," but is allowing states and the public only 60 days to digest and comment on this complex proposal. Further, despite this long drafting process, state cooperating agencies have not received significant outreach, background, or data on the proposal since 2011, contrary to the process originally envisioned in the 2010 Cooperating Agency Memorandum of Understating with these states. In addition, the proposed rule is much broader than the existing stream buffer zone regulations and will affect every coal producing state—not just Appalachian states—while also changing hundreds of existing rules related to mining operations. Given this long closed door process in drafting the proposed rule, it is only fair for OSMRE to grant additional time—less than one tenth of the time OSMRE took coming up with the rule—to allow states and stakeholders to get up to speed and provide meaningful input.

The Stream Protection Rule will also have far ranging impacts on mining states, the economy, and ratepayers. These impacts will likely be augmented by the Environmental Protection Agency's (EPA) carbon dioxide emission rules for new and existing power plants that will significantly harm the coal production and generation industries. EPA has substantially modified these rules since OSMRE used them to analyze the proposed Stream Protection Rule's costs and impacts further complicating review of the proposed rule's effects. Fully analyzing the interplay between these regulations and their potentially devastating impact on the coal industry and economy as a whole will take far more than the allotted 60 days. OSMRE must allow for an adequate comment period of 180 days to ensure a full understanding of the proposed rule's cost and impacts before moving forward with these sweeping changes to the existing stream buffer regulations.

Thank you for your consideration of this request.

Sincerely,

Dan Coats

Mitch McConnell

Pat Roberts

Steve Daines

Heidi Heitkamp

John Boozman

Bill Cassidy, M.D.

Roy Blunt

Tom Cotton

Richard Shelby

John Hoeven

David A. Perdue

Pat Toomey

Mike Crapo

Jerry Moran

Rand Paul

Mike Enzi

Rob Portman

Shelley Moore Capito

John Barrasso

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240
JUN 20 2016

The Hon. Cynthia Lummis
Chairman
Committee on Oversight and Government Reform
Subcommittee on the Interior
United States House of Representatives
Washington, D.C. 20515

Dear Madam Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the December 8, 2015, joint hearing of the Subcommittees on the Interior and on Healthcare, Benefits and Administrative Rules entitled "*Examining the Stream Protection Rule.*"

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Brenda Lawrence, Ranking Member
Committee on Oversight and Government Reform,
Subcommittee on the Interior

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 20 2016

The Hon. Jim Jordan
Chairman
Committee on Oversight and Government Reform
Subcommittee on Healthcare, Benefits and Administrative Rules
United States House of Representatives
Washington, D.C. 20515

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Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Matt Cartwright, Ranking Member
Committee on Oversight and Government Reform,
Subcommittee on Healthcare, Benefits, and Administrative Rules

Joint Subcommittee Hearing before the
Committee on Oversight and Government Reform
Subcommittee on the Interior and the
Subcommittee on Healthcare, Benefits, and Administrative Rules
U.S. House of Representatives
Department of the Interior
December 8, 2015
"Examining the Stream Protection Rule"

Questions from Chairman Cynthia Lummis

1. OSM's Regulatory Impact Analysis for the proposed rule states that the rule would result in the loss of coal mining jobs but that many of these would be offset with jobs created just to keep up with compliance with the rule. **Assistant Secretary, in your view, how are temporary compliance jobs designed to oversee the death of an industry a suitable replacement for high paying long-term coal jobs?**

   Response: We appreciate the opportunity to respond to this important question and provide further clarity about the proposed stream protection rule. The decline in coal usage and production during the past few years is largely a function of the increased availability of low-cost natural gas and lower coal demand resulting from the retirement of aging coal-burning generators. Many newer power plants that have the capability of burning either coal or gas generally have switched to gas. Competition among power suppliers for the wholesale electricity market also has resulted in the retirement of some older, less-efficient coal-fired power plants for which upgrades and retrofits to meet air quality requirements are not cost-effective. In addition, the strong dollar, which is influenced by low oil prices and reduced dependency on foreign oil, has weakened the competitiveness of U.S.-produced coal in the export market. Coal exports declined 23% in 2015, falling for the third consecutive year. Cumulatively, these factors have resulted in reduced demand for coal, thereby depressing coal prices.

   Under the proposed rule, certain employment opportunities would be created in response to the proposed changes in the regulatory environment. According to the draft Regulatory Impact Analysis, compliance-related jobs may include performing inspections, conducting biological assessments, and other tasks that require employment of highly trained professionals (e.g., engineers and biologists) as part of compliance with some elements of the rule. Other increased work requirements associated with elements of the proposed rule likely would require similar skills as currently utilized by the industry (e.g., bulldozer operators).

However, in general, while some of the increased employment demand resulting from the rule may utilize existing mining labor skills (e.g., requirements that entail additional earthmoving), other employment demand may require different types of labor (e.g., biological monitoring, lab testing, paperwork).

The most significant requirements in the proposed rule that would result in the creation of these jobs are those associated with fill construction, material handling, reforestation, and the restoration of streams. Most compliance-related positions would be created in mining companies and the consulting firms and contractors working for the mining companies. The draft Regulatory Impact Analysis also predicts a relatively minimal impact on employment, with an average annual reduction in production-related employment of 260 fulltime equivalents, which would be mostly offset by an average annual increase in compliance-related employment of 250 fulltime equivalents.

2. OSM's analysis of the rule states that it is based on "hypothetical, model mines." If all other things were equal, including methodology, **which would generally be more accurate, an analysis based on hypothetical mines or an analysis based on actual, operating mines?**

   Response: The draft Regulatory Impact Analysis for this proposed rule includes a comprehensive analysis to determine how the rule would impact the supply, demand, and price for coal. The analysis includes baseline data for coal production, use, and market prices. Because the actual prices received by firms from sales to utilities are typically considered trade secrets or are otherwise proprietary, sales and price data are publicly available only at the aggregate industry level. Aggregating data into mine groupings based upon common characteristics and geographic location does not impair the accuracy or the integrity of the analysis. Rather, credible economic studies routinely draw upon aggregate data precisely because it is deemed accurate.

   There are approximately 1,000 coal mines across the United States. Coal mining operations vary from region to region, within a region, and within a mining type in a given region. In addition, the number of active mines is expected to change over time. Therefore, the precise location and operating characteristics of future mines cannot be forecast based on publicly available data. Instead, the draft Regulatory Impact Analysis relies on a "model mine" analysis developed by Morgan Worldwide, Inc., which provides results that are extrapolated to the universe of mines affected by the proposed rule. The "model mine" analysis uses data from existing mines and permits and topographic data from the U.S. Geological Survey, which is then modeled to represent each coal-producing region, and thus allow a comparison of the potential effects of the proposed rule across different regions of the county. These model mines were developed to be representative of the locations where coal mining occurs, the types of mining operations expected to be conducted under baseline conditions, the

production rates at various mines throughout the coal-producing regions of the United States, and how mining operations might change in response to the proposed rule. The model mine analysis is consistent with economic principles and was peer-reviewed by, John Grubb, Adjunct Professor, Department of Mining Engineering at the Colorado School of Mines, and Raja Ramani, Professor Emeritus, Department of Mining Engineering at Pennsylvania State University.

3. In 2009 OSM had an opportunity to perform Section 7 Consultation with the U.S. Fish and Wildlife Service with respect to the previously promulgated 2008 rule which was significantly more tailored in its approach. **Why did your agency not pursue this option and instead change course completely?**

   Response: On December 12, 2008, OSMRE adopted the Stream Buffer Zone Rule. Shortly thereafter, the rule was challenged by environmental groups, in part on the basis of allegations that OSMRE failed to initiate consultation with the U.S. Fish and Wildlife Service as required by Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), to evaluate possible effects of the 2008 rule on threatened and endangered species. The U.S. District Court for the District of Columbia subsequently vacated the rule on that basis. On June 11, 2009, the Department of the Interior, the U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum of Understanding (MOU) that identified both short-term and long-term obligations for each agency. The MOU specifies that, at a minimum, the Department will consider "[r]evisions to key provisions of current SMCRA regulations, including the Stream Buffer Zone Rule and Approximate Original Contour (AOC) Requirements." Section 102(a) of SMCRA states that one of the purposes of the Act is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations," and under Section 102(f) to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

   The Department's review of existing OSMRE regulations under SMCRA at that time revealed, among other things, that coal mining operations continued to have adverse impacts on streams, fish, wildlife and related environmental resources, despite the enactment of SMCRA and the adoption of Federal regulations implementing the law more than 30 years before. Further, based upon all of the available information, OSMRE determined that development of a comprehensive, nationally applicable stream protection rule would be the most appropriate and effective method of achieving the purposes and requirements of SMCRA.

4. This rulemaking began as a targeted effort to address a select set of issues with steep slope mining in certain Appalachian states. OSM acknowledged this in an interagency memo between the Department of the Interior, the Department of the Army, and the Environmental Protection Agency. In the preamble to the proposed rule, OSM completely abandons the pursuit of a targeted effort stating only that "Ultimately, we determined that development of a comprehensive, nationally applicable stream protection rule would be the most appropriate and effective method of achieving the purposes of SMCRA as well as meeting the goals of the MOU." **How is a comprehensive, nationally applicable rule most appropriate for what OSM has long acknowledged is not a national issue?**

   Response: The 2009 MOU states that, at a minimum, OSMRE will consider "[r]evisions to key provisions of current SMCRA regulations, including the Stream Buffer Zone Rule." As noted in the response to Question 3, after conducting extensive outreach and evaluating other information, OSMRE determined that development of a comprehensive, nationally applicable stream protection rule would be the most appropriate and effective method of achieving the purposes and requirements of SMCRA, as well as meeting the objectives set forth in the MOU. Streams are ecologically important regardless of topography or where they are located in the country. Measures to protect the quality and quantity of streamflow, both from surface sources and groundwater discharges, are likewise important regardless of topography or location, as are measures designed to promote the use of native species and to ensure restoration of the capability of mine sites to support the uses that they were capable of supporting before mining.

5. OSM's annual evaluation reports for state programs nowhere reflect an inability on the part of states to adapt to changing needs in the industry. **Why are these evaluations completely ignored in the proposed rule?**

   Response: OSMRE inspections and other oversight activities in primacy states, including the annual evaluation reports, focus on the success of state regulatory authorities in achieving compliance with the approved regulatory program for the state. Directive REG-8, which establishes policy and procedures for the evaluation of state regulatory programs, specifies that the offsite impacts identified in annual evaluation reports do not include impacts from mining and reclamation that are not regulated or controlled by the state program. In other words, the annual evaluation reports generally do not identify or discuss situations in which the existing regulations provide inadequate protection. While Directive REG-8 provides discretionary authority for evaluations of impacts that are not prohibited by the regulatory program, that authority may be exercised only if both OSMRE and the state agree to do so, and if they are not characterized as offsite impacts. Historically, that discretionary authority has not been exercised.

6. OSM now claims that this rule is needed to account for "new science" and its "experience" in the over three decades since enactment of the initial program. **This is directly at odds with the statements in OSM's annual performance evaluations. Both statements cannot be true, which account reflects OSM's view?**

   Response: For the reasons stated in the response to Question 5, the findings in the annual evaluation reports do not address the need for the proposed rule because the proposed rule would address adverse impacts that historically have been allowed to occur under the existing regulations and which are not captured by the annual evaluation reports. For example, many state programs do not address elevated conductivity and increased selenium levels in streams as a result of mining and reclamation operations. The existing regulations do not specifically mention these parameters, in large part because the adverse impacts on aquatic life were not known when OSMRE adopted the existing hydrology regulations under SMCRA. Accordingly, we do not view the findings in the annual evaluation reports and the explanation of the purpose of the proposed rule in the rule's preamble as contradictory.

7. Given the more than satisfactory review OSM has given states over the years for their ability to meet the needs of SMCRA, **why does OSM see the need to overlap and superseded the work of other agencies, such as the Environmental Protection Agency, already regulating water quality?**

   Response: See the responses to Questions 5 and 6. Additionally, the proposed rule would not overlap or supersede the work of other agencies in regulating water quality. To the contrary, if adopted, it would harmonize implementation of both SMCRA and the Clean Water Act by encouraging coordination of permitting and enforcement activities and by relying upon existing Clean Water Act water quality standards, effluent limitations, and designated uses of surface waters to the extent possible. However, the Clean Water Act does not expressly require protection of the hydrologic balance and prevention of material damage to the hydrologic balance outside the permit area, both of which are requirements of SMCRA. Nothing in the Clean Water Act regulates groundwater and, with respect to surface waters, not all streams have designated uses. Clean Water Act water quality standards and effluent limitations do not exist for all parameters that could adversely impact the hydrologic balance. The proposed stream protection rule would fill these regulatory gaps. OSMRE has coordinated with both the EPA and the USACE in the development of both the proposed and final rules. In addition, both the EPA and the USACE will have another opportunity to review the final rule as part of the interagency review process conducted by the Office of Management and Budget. Finally, Section 501(a)(B) of SMCRA requires that OSMRE obtain the concurrence of the Administrator of the EPA with respect to all regulations that relate to air or water quality standards promulgated under the authority of the Clean Air Act or the Clean Water Act.

8. Even if OSM were mirroring the requirements of these laws exactly, I fail to see the need for two agencies requiring the exact same thing. If you intend to defer to the Clean Water Act authorities with respect to water quality provisions in the proposed rule, **why does the rule contain extensive new water monitoring and sampling requirements of your own? Couldn't OSM simply defer to state CWA authorities for this information?**

   Response: As discussed in the response to Question 7, the Clean Water Act is not as comprehensive as SMCRA with respect to protection of the hydrologic balance, so deferral to state Clean Water Act authorities would not achieve the same results as the Stream Protection Rule. The Clean Water Act does not require establishment of a pre-mining baseline and it only requires monitoring of point-source discharges. SMCRA requires that permit applications include baseline information so that the potential impacts of mining can be assessed at the time of permit application and so that impacts that occur during mining and reclamation can be readily identified and evaluated. SMCRA also requires monitoring of both the quality and quantity of surface water and groundwater. Monitoring sites must be located both upgradient and downgradient of the mine site.

9. Department of the Interior Secretary Sally Jewell informed the House Appropriations Committee that OSM has spent "approximately $9.5 million to develop the rule, including the evaluation of multiple options, review of current science and technology, and consultation with stakeholders." **Should this rule go final, it will likely end up in the courts. How much will the Department of the Interior spend to defend this massive rule?**

   Response: At this time, we are unable to respond to this question because any response would be a speculative projection for a rule that has not yet been published in final form.

10. One of the purposes of SMCRA is to encourage the full utilization of our coal resources through underground mining technologies (sec. 101(k)). One study of the rule indicates that it will have an outsized impact on preventing the mining of underground coal resources.

    a. **Did OSM take a hard look on the impact its proposal would have on underground coal mines? Did you actually go out and determine the impact of the proposals against actual operating mines with different underground mining techniques to determine how the rule would affect future underground coal mining? Did you ask the states about the need for changing the rules for underground coal mining?**

b. **Did the Department consider the safety implications of the rule if it forces operators to move away from highly efficient and safe longwall mining technology?**

Response: The draft Regulatory Impact Analysis evaluates and discusses in detail the potential impact of the proposed rule on underground mining. According to that analysis, there would be no significant or disproportionate impact on underground mining.

In addition, the draft Regulatory Impact Analysis specifically analyzed impacts on longwall mining and determined that the proposed rule would still allow substantial coal reserves to be recovered using the longwall mining method. The analysis revealed that most regions would experience little or no impact on longwall mining. Therefore, there was no need to evaluate potential safety implications related to shifts in utilization of longwall technology. In addition, the overall analysis determined there would be no significant shifts between surface and underground mining technologies as a result of the proposed rule.

11. Based on your statement at the hearing on December 8, 2015, the proposed rule will be a "wash" for job losses since it will create compliance jobs. **Where will these jobs be located? Who will be paying the salaries for these new jobs? Can you guarantee that all coal miners who will lose their jobs because of this rule be given these newly created compliance jobs?**

Response: The draft Regulatory Impact Analysis predicts that adoption of the proposed rule would reduce production-related employment by 260 jobs on average nationwide each year, while creating an additional 250 jobs annually nationwide for activities needed to comply with the proposed rule. According to the draft Regulatory Impact Analysis, the Appalachian Basin and the Illinois Basis would account for 75% of the compliance jobs created as a result of the rule. Mining companies would pay the salaries for most of those jobs, either directly through direct hires, or indirectly through the contractors and consultants with which they do business. Many of the newly created jobs would require skills similar to those of some production-related jobs (e.g., heavy equipment operators and truck drivers). See also the response to Question 1.

12. How much will the rule cost in terms of:

a. **Lost value in coal production?**
b. **Increased operating costs at mines?**
c. **Increased expenditures for states?**
d. **Lost tax revenue for states?**

Response: The draft Regulatory Impact Analysis estimates that adoption of the proposed rule would result in less than a 0.2% reduction in coal production. It also estimates that the rule would result in an increase in coal prices of 0.2 to 1.2% (depending upon the region and type of coal) and a 0.1% increase in national electricity production costs for utilities. Total compliance costs would be approximately $52 million per year for mine operators and $855,000 per year for state regulatory authorities. Total industry compliance costs per year would average 0.1% or less of aggregate annual industry revenues. In Appalachia, the average compliance cost for surface mines is estimated to increase operational costs by $0.40 per ton, while compliance costs for underground mines are expected to increase $0.01 per ton. Surface mines in the Illinois Basin and Western Interior regions are expected to experience cost increases of $0.60 per ton as a result of the proposed rule, while underground mines in those regions are expected to experience no increase in operational costs. Mining operations in other regions are not expected to experience an increase in costs as a result of the proposed rule. According to the draft Regulatory Impact Analysis, states would experience an estimated $2.5 million decrease in annual revenue from severance taxes nationwide.

We are reviewing these estimates in response to comments that we received on the draft Regulatory Impact Analysis.

13. How much would the proposed rule increase current reporting burdens on mine operators in the increased number of hours and costs for the new analysis, information collection and reporting requirements?

Response: The preamble to the proposed rule includes a table displaying the estimated hour and non-wage cost burden of the proposed rule. See 80 FR 44584 (Jul. 27, 2015). According to the table, adoption of the proposed rule would impose an additional annual information collection and record-keeping burden on all mine operators combined of an estimated 90,800 hours at a total cost of $4,813,000 per year. In addition, according to the table, adoption of the proposed rule would impose an additional annual information and record-keeping burden on all mine operators combined of an estimated $14,476,000 for non-wage costs. Thus, the estimated total information collection and record-keeping burden on all mine operators combined to comply with the rule is $19,289,000 per year. We are reviewing these estimates in response to comments that we received on the proposed rule.

14. Did the Department consider any measures to reduce these reporting burdens to offset the increase from the new burden?

Response: Section 3501 of the Paperwork Reduction Act, P.L. 104-13, states that one purpose of the law is to "minimize the paperwork burden for individuals, small businesses,

educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government." To meet this requirement, we are reviewing all comments received on the proposed rule, including those that suggested ways to reduce the hour and cost burden on operators and regulatory authorities. We will consider those comments in the process of developing the final rule.

15. **How much will the proposed rule increase the amount of time and costs for states to process permit applications?**

Response: According to calculations for administrative costs submitted to the Office of Management and Budget in compliance with the Paperwork Reduction Act, which were made available to the public during the comment period, the proposed rule would impose an additional burden of an estimated 17,446 hours per year, for a total cost of $855,000 per year for all state regulatory authorities combined.

We are reviewing these estimates in response to comments that we received on the proposed rule.

16. Although you claim that the rule is needed to reflect changes in science over the past 30 years based on your experience with state regulators, your agency's own annual reviews of state regulatory performance directly refute this notion. OSM offers no other explanation in the over 3000 pages of material associated with this rulemaking for application of these duplicative and onerous requirements. Simply stated, OSM has failed to articulate a coherent purpose for this rulemaking.

    a. **Does the rule provide for exceptions when there is an inability to conduct monitoring programs due to differences in accessibility due to snow accumulation, temperature, soil conditions, or other regional differences?**

Response: For the reasons stated in the response to Questions 5 and 6, the findings in the annual evaluation reports do not address the need for the proposed rule. Therefore, there is no contradiction between findings in the annual evaluation reports and the explanation of the purpose of the proposed rule in the preamble to that rule. See also responses to Questions 3, 4 and 7 above.

We are evaluating comments that we received recommending exceptions to monitoring requirements based on weather conditions and regional differences.

Questions from Representative Alex Mooney

a. In your testimony before the Energy and Natural Resources Committee in October 2015, you stated that, "every reclamation practice contained in the proposed rule has been successfully implemented by *a* mine operator somewhere in the country." **Why do you believe that a specific reclamation practice used by an operator in one region, working with a very specific set of geographic, hydrologic, and operational circumstances is appropriate to require nationwide for all operations across a vast diversity of regions?**

   Response: The proposed rule is not premised on this assumption. The proposed rule would afford states and mine operators the flexibility necessary to implement its requirements in an effective manner under a wide range of conditions, including different regions of the country.

b. In your testimony in the previous hearing you stated that "through this proposed rule we are adopting best practices developed over the past 30 years." **If this rule is the adoption of best practices developed by state regulators and operators, why interfere with the flexibility of states and operators to do exactly that—develop best practices?**

   Response: The proposed rule would not interfere with the ability of state regulatory authorities and mine operators to develop and implement new best practices. Instead, the proposed rule would elevate certain existing best practices with a proven track record to be part of the minimum environmental protection standards for all operations.

c. Please list the mine operations and their locations where you assessed the technical and economic feasibility of the proposed rule's requirements and the dates of these visits. Please list the mine operations and their locations where the proposed rule was implemented successfully.

   Response: Attached is a list of some of the best practices for mining and reclamation implemented in certain states and regions.

d. In February of this year state agencies wrote to OSM expressing serious concerns with the lack of engagement with them on development of the draft environmental impact statement noting that they would withdraw from the process if circumstances did not quickly improve. They did not and all but two states withdrew, and those that remain actively oppose the rule. **How do you explain the states withdrawing from the process as a result of OSM's NEPA violations?**

   a. **How many chapters of the draft EIS were sent to the state cooperating agencies? How many total chapters are there in the draft EIS?**

b. Why weren't all chapters of the draft EIS made available to the state cooperating agencies?

Response: As of November, 2010, OSMRE had sent Chapters 1, 2, 3 and 4 of the DEIS to all cooperating agencies. There are nine chapters, plus appendices, in the published DEIS. Chapters 1-4 are the heart of the DEIS. Those chapters include the statement of purpose and need, a description of the alternatives considered, a description of the affected environment, and an analysis of the environmental consequences of the alternatives. Chapters 5-9 had not yet been drafted at the time that OSMRE shared the first four chapters with the cooperating agencies. Chapter 5 is a discussion of consultations conducted; Chapter 6 is a list of preparers and contributors; Chapter 7 lists references cited in the EIS; Chapter 8 lists acronyms used in the EIS; and Chapter 9 is a glossary of terms.

The state regulatory authorities have had numerous opportunities to participate in the NEPA and rulemaking process. The rulemaking process began with an Advance Notice of Proposed Rulemaking, stakeholder outreach meetings, nine public scoping meetings and two public comment periods on the scoping for the draft environmental impact statement (DEIS). The scoping process generated over 20,500 comments, including input from the states. A number of state agencies, including state SMCRA regulatory authorities, participated as cooperating agencies in the early development of the DEIS for the stream protection rule. These states provided meaningful input and comments that were used to prepare the DEIS. In addition, the DEIS was made available for all cooperating agencies and the public to review and provide input on during the public comment period. The public comment period was extended to provide interested parties, including the states, more time to review and comment on the DEIS. OSMRE conducted six public hearings in Colorado, Kentucky, Missouri, Pennsylvania, Virginia and West Virginia during the public comment period. Ultimately, OSMRE received approximately 95,000 comments, including hundreds of pages of comments from state SMCRA regulatory authorities, on the DEIS and the proposed stream protection rule. Also, on October 8, 2015, OSMRE offered all former cooperating state agencies the opportunity to reengage as cooperating agencies in the development of the final EIS.

We have continued to engage in discussions with the state SMCRA regulatory authorities to better understand their comments regarding the proposed stream protection rule. In addition to meetings with the state SMCRA regulatory authorities in conjunction with Interstate Mining Compact Commission meetings, I and/or OSMRE officials either met with or held telephone or video conferences with Wyoming on November 20, 2015, and January 8, 2016; Ohio and Maryland on December 2, 2015; Oklahoma on December 3, 2015; Indiana and Pennsylvania on December 10, 2015; Virginia on December 11, 2015; Illinois on December 16, 2015; North Dakota, Utah and Montana on December 17, 2015; Alaska on January 14,

2016; and West Virginia on February 10, 2016. There were six additional opportunities to meet and collaborate during in April 2016. We are not in a position to speculate as to why certain states chose to withdraw as cooperating agencies.

Attachment

Examples of Best Practices related to the proposed Stream Protection Rule

OSMRE Appalachian Region

West Virginia

Underground Mine Post Mining Hydrologic Evaluation (2012): WVDEP modified a policy to clarify that underground mines had to have monitoring data that would reflect whether the mine would discharge problematic water (quantity or quality) after the mine is closed. This was implemented because it sometimes takes decades for the mine voids to fill and unpredicted discharges have occurred.

Storm Water Runoff Analysis (2006): WVDEP developed regulations requiring operators to model storm water flow on the mining area to demonstrate that mining would not increase peak flow discharge when compared to pre-mining conditions.

Approximate Original Contour Guidance (2004): The West Virginia Department of Environmental Protection, as a result of a litigation settlement, developed a guidance document that provides a consistent engineering method for determining how much material must be stacked back on the mountain and how much may be placed in valley fills. The method was developed with, and agreed to by, the environmental groups that were plaintiffs in the litigation and members of the coal industry:

Valley Fill Construction (2000): WVDEP developed regulations eliminating end-dumping of hollow fills and required "bottom-up" construction in lifts. (Note: WV allows up to 50' lifts)

Ohio

On the Oxford D-2266, Beagle Club permit located in Belmont County near St. Clairsville, Ohio, the operator voluntarily skipped mining approximately 2000' of headwater stream and riparian areas. Mining was completed in the spring of 2010. Despite the mining disturbance of several thousand feet of intermittent and perennial streams and several wetlands, with the headwaters intact, re-establishment of the riparian areas and geomorphically designed stream reconstruction, species health came back almost instantly. Also, tree survival rate in the reconstructed riparian was about 95 percent due to the use of alluvial type soils.

Oxford's Jockey Hollow West Mine, permit D-2255, located in Harrison County, near Moorefield, Ohio, demonstrates where the forestry reclamation approach was used to promote successful tree planting. The area was surface mined in the 1950s and 1960s. The former mining company mined the #9 coal seam and proceeded to take one contour cut along the #8 coal seam, leaving water-filled pits and exposed highwalls. Oxford's mining operation eliminated these AML features. The pre-mining land use was undeveloped and the post-mining land use is undeveloped with trees planted on 60 percent of the affected areas.

The State of Ohio owns the property which the Ohio Department of Natural Resources, Division of Wildlife manage as part of the Jockey Hollow Wildlife Area. Oxford worked with DMRM, OSMRE, and other partners including Ohio University, the Ohio Division of Wildlife, the Wild Turkey Federation, the American Chestnut Foundation, and several others to make this project a success. Oxford planted the area in two phases, with the first phase planted on the southern portion in the spring of 2008. In this area, they planted a mixture of hardwood trees, including 3,000 American chestnuts. The planted chestnuts included two types of hybrid trees (15/16ths and 7/8ths pure American) and a pure American chestnut variety. The northern half of the mine area was planted with another 2,000 American chestnuts in the spring of 2009. Approximately 5,000 chestnuts were planted at the Jockey Hollow site, making this site the largest planting of chestnut trees on mined lands in the eastern coal fields.

Tennessee

The State of Tennessee has adopted statutes and regulations designed to protect water quality. Tennessee Code Annotated, Section 69-3-108, was amended in 2009 to require that for activities related to the surface mining of coal or the surface effects of underground mining, with limited exceptions, no coal mining or disposal of spoil or coal waste materials may occur within 100 feet of the ordinary high water mark of a stream. Under the **Responsible Mining Act**, if the State determines that surface coal mining at a particular site will violate water quality standards because acid mine drainage from the site will not be amenable to treatment with proven technology both during the permit period or subsequent to completion of mining activities, the state NPDES permit must be denied. Thus, in effect, no valley fills, mining activities, or in stream ponds are permitted under the Clean Water Act in Tennessee.

Kentucky

Kentucky's Approximate Original Contour/Fill Minimization Protocol is also known as the "**Fill Placement Optimization Process.**" These guidelines provide coal mining companies a set of consistent and reasonable engineering processes they can use when their proposed operations could impact the headwater streams in Kentucky. This engineering protocol was spearheaded by the Kentucky Department for Natural Resources (DNR) and included extensive state and federal collaboration with special representation from both Kentucky's environmental and coal industry to comply with the requirements of both SMCRA and the Clean Water Act.

An engineering team representing Kentucky DNR, U.S. Army Corps of Engineers, the Kentucky coal mining industry, a Kentucky environmental group and the U.S. Office of Surface Mining Reclamation and Enforcement developed the excess spoil fill design protocol. The protocol meets SMRCA's stability and AOC requirements and the alternatives analysis for minimizing stream impact required by the CWA. The protocol maximizes the amount of coal mine spoil returned to the coal mined area while minimizing the amount of coal mine spoil placed in excess disposal sites, i.e. "valley fills." In turn, this minimizes the impact to aquatic and terrestrial habitats in watersheds below the mining operation.

University of Kentucky Robinson Forest – Guy Cove Project
In 2008 construction began on a multi-faceted geomorphic reclamation project on this 100 acre, first order watershed, mined in the early 1990s. The project includes the Forestry Reclamation Approach, stream creation, and a passive treatment system to restore the form and function of a mined first order water-shed. This study, named the Guy Cove Project, is being conducted by the University of Kentucky in partnership with the Kentucky Department of Fish and Wildlife, the Kentucky Department for Natural Resources, OSMRE, and the Army Corp of Engineers. It utilizes a multi-strategy approach with three remediation procedures:

- valley-fill reconfiguration with the creation of a surface-flowing intermittent and four ephemeral streams;
- reforestation using the Forestry Reclamation Approach; and
- creation of a bioreactor-wetland treatment system.

The objectives of this Restoration Project are to:

- Recreate headwater stream functions in an economically feasible manner (perennial 790 feet, intermittent 2,495 feet, and ephemeral 1,555 feet);
- Attenuate runoff events to reduce peak discharges and increase base flows;
- Promote surface expression of water and enhance wetland treatment efficiency to improve water quality;
- Improve habitat through the development of vernal ponds and a hardwood forest;
- Establish an outdoor classroom for demonstrating design principles, construction techniques, and measurement of system performance; and
- Educate a myriad of stakeholders including consulting and mining engineers, land reclamation design professionals, the regulatory community, environmental advocacy groups, and students.

WEEP BERMS
Middle Fork Development Corporation
263 Acre Surface Mine in Magoffin County
Approved mining methods: Area and Remining.

Post mining land use is forestland using Forestry Reclamation Approach
Experimental practice replaces the natural berm with a stable engineered earthen berm.

The constructed earthen berm will collect runoff and allow passive infiltration and seepage that diffuses runoff or "weeps" into the natural forested area. Weep berms have been designed to better mimic the pre-mining hydrology. Middle Fork used surface mine permit 877-0191 as a demonstration mine to prove that a surface mine can be designed and mined to minimize impacts from specific conductivity and metals from entering the waters of the United States. The mining and reclamation plans, put forward by Dr. Richard Warner with the University of Kentucky and Mr. Greg Higgins with Middle Fork, included the following: 1) isolation of spoil that would normally increase specific conductivity; 2) reduction of spoil exposure to weather by mining and reclamation in a very contemporaneous manner; 3) use of the Forest Reclamation Approach (FRA) to reduce surface runoff; and 4) installation of check dams and weep berms to remove the sediment and create a diffuse discharge that replicates the forest hydrology and environment. The new mining techniques were compared to existing mining methods to illustrate the benefits that included elimination of excess spoil disposal in valley fills, elimination of instream or on bench sediment ponds because of the diffuse flow, elimination of stream loss because fills and instream ponds were not necessary to control and treat runoff, and a reduction in runoff because of the FRA approach that minimizes compaction and promotes loose dumping of mine spoil to promote infiltration.

Under the Surface Mining Control and Reclamation Act and the implementing Federal regulations (30 CFR §785.13), a variance from environmental protection performance standards for experimental or research purposes, or to allow an alternative postmining land use, may be undertaken if they are approved by the regulatory authority (Kentucky Department of Natural Resources) and the OSMRE. For the weep berms to be installed on this project, a major revision addressed the experimental practice and the request to waive the Federal and State requirement to maintain a natural berm. OSMRE approved the Experimental Practice for Middle Fork permit number 877-0191 in the spring of 2013.

OSMRE Mid-Continent Region

Illinois

During the 1980's, the Illinois Department of Mines and Minerals (state regulatory authority) approved under SMCRA the mining and restoration of three of the largest perennial stream relocation projects as a result of surface coal mining. Several Illinois surface mines, the state regulatory authority, the Illinois Department of Conservation and the Southern Illinois University of Carbondale's Cooperative Wildlife Research Laboratory (CWRL) developed a plan that accounted for the restoration of both hydrologic and biological function as part of the reclamation of the plans that allowed for mining through Bonnie, Galum and Pipestone Creeks in Perry County, Illinois. Currently restored to their same locations these streams were subject to reassessment as part of an Applied Science project funded by OSMRE between the years 2011 and 2013. This study, conducted cooperatively by the U.S. Geological Survey and the Southern Illinois University – Carbondale's CWRL, examined the streams water quality, fish and macroinvertebrates, stream stability, hydraulics, riprarian wildlife habitat and wetland soil quality. These were compared to nearby unmined Little Galum Creek.

Overall, the study concluded that based on most of the stream water quality, wetland soil quality, hydraulic and stream stability, and wildlife habitat parameters measured, the streams and riparian systems have been restored to a level comparable to that of an unmined area. The report did note that there were a few parameters that will take longer to recover such as canopy cover and soil quality in deeper horizons and that certain sections of the restored streams channels show instability having not yet established equilibrium. In summary the restorations provided wide accessible floodplains with wooded riparian corridors and sinuous streams were a large improvement from the straight-line diversion channels that were common historically. While riparian processes were relatively quickly restored and water quality was maintained at near pre-mining conditions, in-stream processes and form will take longer to recover.

Indiana

As a demonstration of BMP's, the Indiana Division of Reclamation, took extraordinary precautions to protect the hydrologic balance in relation to the Hymera Mine located in close proximity to the town of Hymera in Sullivan County, Indiana. The Indiana Division of Reclamation placed numerous conditions on the operations which focused on maintaining water levels in existing abandoned underground mine workings in an effort to prevent subsidence and adverse impacts on nearby lakes and streams. Specifically, the conditions aimed to prevent dewatering of the old works which could increase the likelihood of further subsidence and ensure protection of the hydrologic balance and prevention of offsite impacts. Safeguards that were placed in the permit required the operator to: set trigger elevations on the water levels in the underground mine pools and monitor these levels on a daily basis; fully delineate the old mine works in the vicinity; size coal barriers sufficiently to minimize seepage and prevent drainage from the existing mine pools; and have a plan in place to immediately investigate any inflow into the mine pit and backfill if found to be from the mine works.

OSMRE Western Region

Montana, Wyoming, New Mexico

Surface mining and reclamation activities in Western Region states typically occur in semi-dry areas; such as, the Powder River Basin in Montana and Wyoming, and the San Juan Basin in New Mexico.

Streams in these regions can quickly go from zero flow to flood events after storms. Flood events can impact mining and reclamation operations as well as damage property and the environment.

Mine operators in these areas recognize the importance of understanding the hydrologic characteristics of streams. For that reason, some operators typically exceed SMCRA requirements for the collection of baseline hydrologic monitoring data. Currently, our regulations require baseline hydrologic monitoring data (quality and quantity) on surface water and groundwater sufficient to demonstrate seasonal variations and water usages. Some regulatory agencies have interpreted these requirements as meaning conducting only two baseline sampling events, one during a low-flow event and another during a high-flow event. We believe that an operator needs more than two sampling events to adequately characterize baseline hydrologic

conditions (quality and quantity) in the permit and adjacent areas. Hence, in the proposed SPR, we require the operator collect 12-monthly samples for surface water and groundwater monitoring sites deemed necessary to characterize baseline hydrologic conditions (quality and quantity) in the permit and adjacent areas.

Arizona

At the Kayenta Mine Complex in northern Arizona, Peabody Western Coal Company implements surface water monitoring stations with telemetry to remotely collect surface flow data to capture the complete hydrologic event. The hydrologic information is not only valuable for mine plan operations, but enables the regulatory authority to make more informed decisions on the Cumulative Hydrologic Impact Assessment prepared by the regulatory authority.

Managing the highly variable flow events in the Western Region is also accomplished through adherence to Approximate Original Contour (AOC) requirements using landforming reclamation principles. Restoring to the pre-mining drainage pattern manages the volume of water during the precipitation event, and erosive forces are dissipated by reclaiming mined through streams with sinuous channels. Stream reclamation using landforming principles occurs at several mines in the Western Region. The SPR proposes that the post-mining drainage pattern of all streams be similar to the pre-mining drainage pattern to ensure stability, minimize downcutting, and enhance fish and wildlife habitat. Western Region operations where landforming reclamation principles are applied include the *New Mexico San Juan Mine*, and *McKinley Mine and Navajo Mine on the Navajo Reservation* to name a few.

The Western Region coal mining and reclamation operations are large, and may influence multi-use aquifer systems. For example, coal bed methane development is comingled with coal mining operations in the Wyoming Powder River Basin. For that reason, a robust hydrologic monitoring program is employed to enable the regulatory authority to discern the hydrologic impacts associated with coal mining. Additionally, mine operations in the Powder River Basin independently formed an organization to collectively monitor and evaluate regional hydrologic impacts. The SPR proposes increased baseline groundwater monitoring, and monitoring during mining and reclamation to allow the detection of hydrologic impacts prior to rising to a level of material damage. Other examples of multi-use regional aquifers in proximity to coal mining operations include the Black Mesa Navajo aquifer in northern Arizona, and the Star Point Sandstone aquifer in central Utah.

Award Winners related to the proposed Stream Protection Rule

2007 Active Mine Reclamation Award Winners

Foundation Coal West, INC., Belle Ayr Mine, Caballo Creek Channel Reclamation, Wyoming

Noting the importance of water in this semi-arid area, reclamation began before the Surface Mining Control and Reclamation Act (SMCRA) was signed in 1977 and has resulted in 3.3 miles of reclaimed stream. It has been built to replicate the pools and runs of a typical prairie stream system enabling fish and wildlife to survive in all but the driest conditions. As the stream restoration continues furthering the perennial designation, reconstruction of a small recreational lake is planned.