

# Molehills out of Mountains



**Documents refute Republican allegations about rulemaking to protect streams from mountaintop removal mining**



**NATURAL  
RESOURCES**  
COMMITTEE • DEMOCRATS  
RANKING MEMBER, EDWARD J. MARKEY

**NOTE: This report has not been officially adopted by the Committee on Natural Resources and may not necessarily reflect the views of its Members.**

**Released: March 6, 2012**



# Molehills out of Mountains

Documents refute Republican allegations about rulemaking to protect streams from mountaintop removal mining

Waste from mountaintop removal mining has buried or despoiled nearly 2,000 miles of Appalachian streams over the last 30 years.<sup>1</sup> The Department of Interior's Office of Surface Mining (OSM) is now evaluating options for a new Stream Protection Rule that would address this problem and replace an inadequate rule adopted in the final weeks of the George W. Bush administration. The Obama administration agreed to take this action in settling a legal challenge to the Bush rule, which loosened Reagan-era restrictions on the dumping of mining waste in or near streams.

Republicans on the House Natural Resources Committee, who oppose a new Stream Protection Rule, are now investigating OSM's relationship with a contractor, Polu Kai Services (PKS), that was hired in June 2010 to prepare an Environmental Impact Statement (EIS) for the rule.<sup>2</sup> OSM and the contractor mutually agreed to end their relationship in March 2011 before the EIS was complete.<sup>3</sup> Committee Republicans allege that the Obama administration and OSM acted improperly in seeking this separation agreement and in managing the contract.

The Department of Interior has provided more than 12,000 pages of documents to the Committee in response to Republican requests for documents related to this matter.<sup>4</sup> Democratic Committee Staff reviewed these documents at the request of Ranking Member Ed Markey (D-MA) to assess the validity of the Republican allegations. The documents do not support these allegations and in fact show the allegations are untrue. Specifically, Democratic Staff found that:

- **OSM has acted responsibly in developing the new Stream Protection Rule.** Republicans charge that OSM has “recklessly rushed” the stream protection rulemaking, and that it has not provided opportunity for input from outside the agency.<sup>5</sup> Yet after two years of evaluating the issue, OSM still has not even issued a *proposed* rule. Moreover, OSM received more than 32,000 comments on an Advanced Notice of Proposed Rulemaking—which OSM was under no requirement to publish—and has overseen unprecedented outreach sessions with coal companies and other stakeholders.<sup>6</sup> The agency has already “received more public comments than were received on that entire [2008 Stream Buffer Zone] rulemaking,” according to OSM Director Joe Pizarchik.<sup>7</sup> Once OSM issues a proposed rule, the public will have another opportunity to comment, and OSM must consider these comments before issuing a final rule that has the force of law.

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<sup>1</sup> Final Programmatic Environmental Impact Statement, October 2005, [http://www.epa.gov/region3/mtntop/pdf/mtm-vf\\_fpeis\\_summary.pdf](http://www.epa.gov/region3/mtntop/pdf/mtm-vf_fpeis_summary.pdf).

<sup>2</sup> Contract between OSM and Polu Kai Services, LLC, signed June 7, 2010.

<sup>3</sup> Modification of Contract, signed March 24, 2011.

<sup>4</sup> Letter from the Department of Interior to Chairman Hastings, Feb. 2, 2012.

<sup>5</sup> Rep. Lamborn, full Committee markup, Feb. 29, 2012

<sup>6</sup> Letter from the Department of Interior to Chairman Hastings, March 1, 2011.

<sup>7</sup> Hearing, Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, Nov. 4, 2011.

- **OSM provided appropriate instructions to the contractor preparing the Environmental Impact Statement.** OSM instructed Polu Kai Services not to share drafts of the proposed rule or Environmental Impact Statement with outside parties such as coal companies. Republicans claim this instruction violated OSM’s “Statement of Work” rules for the contract because the Statement of Work authorized contact with coal companies. In fact, the Statement of Work specifically instructed the contractor that documents could not be disseminated without written approval of the OSM contracting officer (something Republicans have not acknowledged).<sup>8</sup> OSM wanted the contractor to obtain information from coal companies but not to share deliberative documents prior to the publishing of a proposed rule. The instruction was consistent not only with the Statement of Work but with long-standing rulemaking practice under the Administrative Procedure Act.
- **OSM had sound reasons for separating from the EIS contractor.** Committee Republicans have charged that OSM ended its relationship with Polu Kai Services before the EIS was complete because an unfinished draft EIS chapter projected job losses from a possible new rule. However, documents show that OSM had concerns about the contractor’s overall performance, and that these concerns were expressed well before the job estimates were done.<sup>9</sup> What’s more, mining state officials and technical experts from other federal agencies and within OSM were all harshly critical of the contractor’s work, characterizing draft EIS chapters as “inaccurate,” “incomplete,” “erroneous,” “incorrect,” and “insufficient.” There were even apparent instances of plagiarism identified.

Instead of wasting time and taxpayer resources investigating OSM’s decision to separate from an underperforming contractor, Democrats believe the focus of the Natural Resources Committee should be on the need for a new Stream Protection Rule. The current rule must be strengthened to prevent more Appalachian streams from being buried and polluted by mountaintop removal mining. The Republicans’ investigation is a distraction from that effort.

## OSM’s rulemaking is necessary to safeguard Appalachian streams

Coal companies commonly use mountaintop removal mining to access coal in the Appalachian Mountains. Dirt and rock that overlay coal deposits are removed and the “overburden”—waste that can’t be returned to the mined out area—is placed in mountain valleys and often finds its way into valley streams. Waste from mountaintop removal mining has buried 700 miles Appalachian streams and despoiled another 1,200 miles of streams over the last 30 years.<sup>10</sup>

Instead of addressing this problem, the George W. Bush administration issued a “midnight regulation” on Dec. 18, 2008, that loosened protections put in place 25 years earlier during the

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<sup>8</sup> See Appendix B and D.

<sup>9</sup> See Appendix B.

<sup>10</sup> Final Programmatic Environmental Impact Statement, October 2005, [http://www.epa.gov/region3/mtntop/pdf/mtm-vf\\_fpeis\\_summary.pdf](http://www.epa.gov/region3/mtntop/pdf/mtm-vf_fpeis_summary.pdf).

Reagan administration.<sup>11</sup> The 1983 rule prohibited the dumping of mining waste within 100 feet of a stream without authorization, and allowed surface mining only if a determination was made that streams and water quality would not be harmed. The 2008 rule undid both of these protections. It allows the dumping of mining waste within 100 feet of a stream if the mining operation can show that “avoiding disturbance of the stream is not reasonably possible.”<sup>12</sup> And no longer is it necessary to assure that new surface mining will not cause or contribute to violations of water quality standards.

The Bush rule was quickly challenged in court by Appalachian environmental organizations along with the Sierra Club and a separate lawsuit by the National Parks Conservation Association. The Obama administration chose to settle this litigation and reopen the rulemaking process rather than defend the Bush action, which not only offered inadequate protection but was not developed according to legal requirements.

In issuing the 2008 rule, OSM failed to provide either a reasoned explanation or an evidentiary basis for its action, ignored evidence of adverse environmental impacts, and claimed without supporting evidence that the rule would “positively impact the environment.”<sup>13</sup> That put the agency’s action at odds with the Administrative Procedure Act, the Surface Mining Control and Reclamation Act, the National Environmental Policy Act, and other environmental laws.

Republicans on the Natural Resources Committee have argued that OSM’s current rulemaking should not go forward because the Bush rule was “carefully crafted and properly vetted”<sup>14</sup> and because the “2008 rule was more protective of the environment than the original 1983 rule issued during the Reagan administration.”<sup>15</sup> These claims, however, do not stand up to scrutiny. The Obama administration has acted responsibly in initiating a new rulemaking to fix the 2008 action.

## OSM is carefully analyzing options and gathering input

Committee Republicans have also charged that OSM has “recklessly rushed” the stream protection rulemaking, and that it has not provided opportunity for input from outside the agency.<sup>16</sup> However, OSM is still at the beginning of its rulemaking process and has provided more opportunity for outside comment than is typical at this point of a rulemaking. Indeed, OSM has already “received more public comments than were received on that entire [2008 Stream Buffer Zone] rulemaking,” according to OSM Director Joseph Pizarchik.<sup>17</sup>

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<sup>11</sup> 73 Fed. Reg. 75814.

<sup>12</sup> §780.28(b)-(c); 73 Fed. Reg. 75877.

<sup>13</sup> 73 Fed. Reg. 75875.

<sup>14</sup> Rep. Johnson, field hearing, Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, Sept. 26, 2011.

<sup>15</sup> Rep. Lamborn, field hearing, Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, Sept. 26, 2011.

<sup>16</sup> Rep. Lamborn, Full Committee Markup, Committee on Natural Resources, Feb. 29, 2012.

<sup>17</sup> Hearing, Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, Nov. 4, 2011.

In November 2009, OSM published an Advance Notice of Proposed Rulemaking (ANPRM), which asked for public comments on 10 options for a new Stream Protection Rule that would replace the Stream Buffer Zone rule. OSM was not required to publish this ANPRM seeking initial public comment, and in fact, most federal rules are developed without an ANPRM. In response to this notice, OSM received more than 32,000 public comments.<sup>18</sup> Later, OSM also convened stakeholder outreach sessions to gather input from a variety of players, including the coal industry. Such stakeholder sessions were not done for the Bush administration's Stream Buffer Zone revisions.

After considering comments on the ANPRM, OSM in April 2010 published a Notice of Intent to conduct an Environmental Impact Statement for the Stream Protection Rule and two months later contracted with the firm Polu Kai Services (PKS) to prepare the EIS. PKS provided OSM with draft chapters of the EIS over a period of several months from late 2010 to early 2011.<sup>19</sup> OSM then immediately circulated those chapters—without making any changes—to states and other government agencies for feedback.

The comments that came back were harshly critical and, as discussed in more detail below, ultimately contributed to OSM's decision to seek a separation agreement with PKS, which was formalized on March 24, 2011. However, the existence of these comments—and the fact that OSM listened to them—again refutes the Republican accusation that OSM has not considered input from outside the agency. OSM is now working with another contractor to complete the EIS, and continues to gather outside input.

Finally, it should be emphasized that OSM has not yet issued a proposed rule. Under the Administrative Procedure Act, federal agencies are required to first seek and consider public comments on a proposed rule before issuing a final rule that has the force of law. Despite Republican charges that the stream protection rulemaking has been rushed, OSM still hasn't issued a proposed rule after more than two years of studying the issue.

## OSM was right to instruct the contractor not to share pre-proposal documents

Committee Republicans further allege that OSM provided inappropriate and contradictory instructions to PKS about consultations with coal companies. In telling this story at a recent Committee hearing, they exhibited three slides of OSM documents and emails.<sup>20</sup> As shown in Appendix D, however, these slides do not support the Republicans' claims and in fact show that OSM gave appropriate and consistent instructions.

OSM Director Joe Pizarchik instructed that PKS was not to share drafts of the proposed rule or Environmental Impact Statement with outside parties (such as coal companies), according to an email from an OSM employee. Republicans claim this instruction violated OSM's "Statement of Work" rules for the contractor because the Statement of Work authorized contact with coal companies.

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<sup>18</sup> Letter from the Department of Interior to Chairman Hastings, Mar. 1, 2011.

<sup>19</sup> October 17, 2011 Production of Documents by the Department of Interior to Chairman Hastings.

<sup>20</sup> Rep. Johnson, Hearing, Natural Resources Committee, Feb. 15, 2012.

In fact, the Statement of Work specifically instructed that confidential materials could not be released without written approval of the OSM contracting officer—something Republicans left out of their slides. OSM wanted the contractor to obtain information from coal companies but not to share deliberative documents prior to the publishing of a proposed rule. Pizarchik’s instruction was consistent not only with the Statement of Work but with the Administrative Procedure Act, which directs federal agencies to hold a public comment period after a proposed rule is issued. Selectively distributing drafts of the proposal to coal companies or other privileged parties before the period designated for general public comment would undermine the integrity of the rulemaking process.

### The contractor’s drafts of the Environmental Impact Statement were inaccurate

Republicans have alleged that OSM acted improperly in seeking the March 2011 separation agreement with its EIS contractor, Polu Kai Services. Specifically, they charge that this was done because the contractor included estimates in unfinished draft EIS documents from January 2011 showing that several thousand jobs could be lost from a new Stream Protection Rule. “After the job loss estimates became public”—they were leaked to the press—“this administration ended the contract with this particular contractor,” Rep. Doug Lamborn (R-CO), chairman of the Energy and Mineral Resources Subcommittee, said at a hearing held April 7, 2011.<sup>21</sup> In apparent contradiction with this allegation, Republicans have also said that the Stream Protection Rule will cost jobs “according to the Obama administration’s own analysis of the rule,” which implies the administration stands behind the numbers in the contractor’s draft work.<sup>22</sup>

In fact, the jobs estimates were considered placeholders and had not been checked by OSM or other reviewers. Documents have since emerged that call into question the accuracy of the contractor’s work and refute the Republicans’ accusation that the separation agreement was motivated by the jobs estimates.

As noted earlier, OSM received draft EIS chapters from PKS over a period of several months from late 2010 to early 2011, and immediately circulated those chapters to states, other government agencies, and technical experts within OSM for feedback. That feedback, which has been provided to the Committee, makes clear the draft chapters were incomplete and unreliable. Officials from mining states, including Virginia, West Virginia, Kentucky, Utah, and Wyoming, wrote that the contractor’s work showed a lack of knowledge, while government engineers and scientists said analysis needed to be redone and pointed out apparent instances of plagiarism. Such criticisms went well beyond the jobs estimates cited by Republicans.

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<sup>21</sup> Hearing, Subcommittee on Energy and Mineral Resources, Natural Resources Committee, April 7, 2001.

<sup>22</sup> Rep. Johnson, Field Hearing, Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, Sept. 26, 2011.

Here is a sample of the numerous critical comments on PKS's EIS drafts (from OSM documents shown in Appendix A):

- “I certainly hope that an EIS is not going to be developed based on this inaccurate and incomplete information contained in this document.”—Bradley Lambert, deputy director, Virginia Department of Mines, Minerals, and Energy, Nov. 1, 2010
- “The analysis is insufficient for a document of this importance.” —Kathy Ogle, geological supervisor, Wyoming Department of Environmental Quality, Jan. 26, 2011
- “The document displays very little depth of understanding of technical issues.”—Thomas Clarke, West Virginia Department of Environmental Protection, Jan. 26, 2011
- “The logic [used] is not readily apparent and appears in many cases to be based upon erroneous assumptions, incorrect interpretations, and a lack of understanding of current programmatic practices one region to another.”—Bruce Stevens, director, Indiana Division of Reclamation
- “The evaluations provided... appear to inconsistently characterize the Gulf Coast Region as a... general area where coal and lignite mining could potentially occur...”—John Caudle, director, Texas Surface Mining and Reclamation division, Nov. 1, 2010
- “Without some serious modifications to the current geographical scope of this EIS as it relates to the Colorado Plateau, any conclusions made in Chapter 4 about impacts to the environment and the coal mining industry in Utah (and other parts of the Colorado Plateau) will be inaccurate.”—Peter Brinton, environmental scientist, Utah Division of Oil, Gas & Mining, Nov. 1, 2010
- “The text for this section of the EIS in its entirety was taken from an EPA coalbed methane paper, and contains inherent errors as a result when applied to coal mining. The map associated with this inappropriate description in the original source is also incompatible with the maps generated for this EIS.”—Dana Dean, associate director of mining, Utah Division of Oil, Gas & Mining, Nov. 1, 2010
- “As drafted, there are numerous statements that are conclusory and do not appear to be explained.” —Dana Jacobsen, Department of Interior solicitor
- “The writers seem to have little knowledge of Appalachian mining practices (and overall surface mining practices)... This should be rewritten by professional engineers, geologists and regulatory experts with a working knowledge of the subject matter.”—David Lane, civil engineer, OSM
- “The geology descriptions, at times, are extremely general and, at times, even discuss non-coal geology that will not ever be disturbed when mining coal.”—OSM Hydrology Team
- “A google search reveals that... information was taken, pretty much verbatim without quotes or summary... Several sections... were literally, cut and pasted, into the geology section of the EIS without first summarizing the information or placing the information in quotes to show it is being used verbatim.”—OSM Hydrology Team

Polu Kai Services specializes in construction, environmental remediation, and hazardous waste management, but this was the first time it had been responsible for preparing an Environmental Impact Statement. The firm's status as a so-called 8(a) disadvantaged small business allowed OSM to expedite the contracting process and help meet the Department's 8(a) goals. PKS's inexperience, however, may have contributed to the subpar work.

Committee Republicans have brushed this aside and blamed OSM for setting unreasonable deadlines, but PKS agreed to these deadlines in taking on the contract. PKS's inability to meet agreed-upon deadlines is more evidence that OSM had good reason to want a separation.

## OSM was unhappy with the contractor well before the jobs estimates

The timeline of events also does not support the Republicans' allegation that OSM ended its relationship with PKS because of the jobs analysis. Indeed, career civil servants were unhappy with PKS long before the jobs analysis was performed, according to internal OSM emails and documents shown in Appendix B.

A little more than three months after beginning work, PKS backed out of an agreed-upon deadline and asked for a 90-day extension. In response, a senior OSM program analyst wrote the following email to her colleagues on Sept. 10, 2010: "I consider this move to be in bad faith and I have nothing good to say about this contractor. Their total lack of project management skills and disregard for our requirements is very disturbing."<sup>23</sup> A little more than a month later, an OSM civil engineer sharply criticized a draft chapter of the EIS on topography, writing in an email, "My overall impression is that very little research was done by the contractor in generating this document."<sup>24</sup> The draft chapter containing estimates about jobs was not circulated for review until January 2011, more than two months after this comment.<sup>25</sup>

## OSM separated from the contractor for sound reasons

In early 2011, OSM considered options for addressing its problems with the contractor, including ending the contract. Democratic Committee Staff reviewed documents *in camera* that were developed for weighing those options. In those documents, OSM listed the following concerns about continuing with the contractor (paraphrasing):

- OSM questioned PKS's ability to perform analysis required under the National Environmental Policy Act.
- OSM was concerned that continuing the contract could result in cost overruns and delays.
- OSM questioned whether PKS would follow instructions given previous problems.
- OSM worried about persistent challenges with logistics and coordination.
- OSM worried about the amount of staff time being devoted to tracking contractor performance issues.

Taking these concerns together, the case for separating from the contractor appeared to be overwhelming—and it had nothing to do with the jobs analysis. Indeed, OSM's internal documents did not list the jobs analysis as a reason for ending the contract.

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<sup>23</sup> See Appendix B.

<sup>24</sup> Document not provided in appendices because of FOIA Exemption 5.

<sup>25</sup> Production of documents by the Department of Interior to Chairman Hastings, Oct. 17, 2011.

## Conclusion: The Republicans' investigation is about politics

At the heart of this matter is a policy dispute: Republicans don't want the Obama administration to issue a new rule protecting Appalachian streams from mountaintop removal mining. That is a legitimate subject for debate, and OSM has already solicited and received a wide array of public comments—both in support of and in opposition to a new rule—as it has worked to prepare an EIS and a proposed rule.

Republican allegations of wrongdoing, however, are not supported by the evidence. DOI has provided more than 12,000 pages of documents to the House Natural Resources Committee, including the original contract between PKS and OSM, numerous emails involving PKS and OSM personnel, and comments from state and federal experts about PKS's work product. This material shows overwhelmingly that OSM had sound reasons for separating from PKS and that it provided appropriate instructions.

Republicans are nonetheless requesting still more documents and threatening to compel disclosure of others that the Department of Interior considers privileged, despite the Department's cooperation in producing thousands of pages of documents. Without any evidence of wrongdoing, this effort seems more like a fishing expedition than an investigation. There is simply no reason to ask the Department to spend additional taxpayer dollars collecting, reviewing, and producing documents connected to the stream protection rulemaking.

Democrats on the Natural Resources Committee are focused on the policy. If the current rule is not strengthened, more Appalachian streams will be buried and polluted by mountaintop removal mining. OSM is now evaluating options about how to address this problem, and will eventually propose a rule that everyone will be able to evaluate and comment on—before a final rule is issued. OSM should be encouraged to move forward with this process, and the Republicans should end their baseless investigation and unsupported charges.

*Cover photo courtesy of iLoveMountains.org*

# Appendix A

Comments of various federal and state regulators and  
experts on PKS's draft EIS chapters

**From:** [Craynon, John](#)  
**To:** [Coker, Jeffrey A. "Jeff"](#); [Ehret, Paul](#); [Means, Brent P.](#); [Calle, Marcelo](#)  
**Subject:** Fw: 2010-10-30 comments re 10-22-10 draft EIS Chapter 3  
**Date:** Monday, November 01, 2010 1:17:30 PM  
**Attachments:** [EIS Comment form-Combined.doc](#)

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**From:** Lambert, Butch (DMME) [<mailto:Butch.Lambert@dmme.virginia.gov>]  
**Sent:** Monday, November 01, 2010 07:53 AM  
**To:** Ehret, Paul; Craynon, John  
**Cc:** [gconrad@imcc.isa.us1](mailto:gconrad@imcc.isa.us1); [Lewis.a.halstead@wv.gov](mailto:Lewis.a.halstead@wv.gov) <[Lewis.a.halstead@wv.gov](mailto:Lewis.a.halstead@wv.gov)>; Vincent, Les (DMME) <[Les.Vincent@dmme.virginia.gov](mailto:Les.Vincent@dmme.virginia.gov)>; Davis, Jackie (DMME) <[Jackie.Davis@dmme.virginia.gov](mailto:Jackie.Davis@dmme.virginia.gov)>  
**Subject:** FW: 2010-10-30 comments re 10-22-10 draft EIS Chapter 3

Gentlemen,

Please find attached Virginia's comments on Chapter 3. For the record, the information contained in this chapter is very poorly organized and written. For this reason, additional time should have been granted to review and comment. I certainly hope that an EIS is not going to be developed based on this inaccurate and incomplete information contained in this document. OSM should be concerned about this product reaching the public for their review under the OSM direction.

<<EIS Comment form-Combined.doc>>

**Sims, Pam**

**From:** Ehret, Paul  
**Sent:** Monday, January 31, 2011 3:01 PM  
**To:** Coker, Jeffrey A. "Jeff"; Craynon, John; Calle, Marcelo; Means, Brent P.  
**Subject:** FW: Wyoming's Comments on Chapter 4

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**From:** Ogle, Kathy [<mailto:KOgle@wyo.gov>]  
**Sent:** Wednesday, January 26, 2011 10:57 AM  
**To:** Ehret, Paul  
**Cc:** Corra, John; McKenzie, Don; Bilbrough, Carol  
**Subject:** Wyoming's Comments on Chapter 4

Paul,

Below are Wyoming's comments on Chapter 4. They will also be sent via a letter from John Corra, our Director. However, he is at a legislative hearing this morning. I will also post these to the SharePoint Site.

Kathy Muller Ogle

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We would like to take the opportunity to make limited, but important comments on the pre-draft Chapter 4 of the OSM EIS on the proposed Stream Protection Rule. On January 18, 2011, Wyoming requested a deadline extension for the review of such a lengthy, complex, and important document. We have not received a response to our request which was delivered both by mail and by email. Since we had not received a response, we are making only general comments on the limited sections that we had sufficient time to review. Two overarching comments are that the document is hard to evaluate and that the analysis is insufficient for a document of this importance.

**P4-195 Lines 14-17; Alternative 5 (Preferred Alternative) – Material Damage**

The provision that would not allow "material damage to the hydrologic balance" at any time during the operation and mitigation or remediation would not be allowed if the potential for material damage was demonstrated in the permit application would have significant impacts of coal mining in Wyoming. The material damage criteria are applied to both surface and groundwater in our state. In western reclamation, a backfill aquifer is developed and early in its maturation the dissolved solids concentration is often elevated above standards. However, over time those elevated concentrations decrease. This is a process that is documented in scientific research and by monitoring data collected over 25 years. Impact of this approach by OSM is SIGNIFICANT and revision is needed. The recommendation is to leave the definition of material damage to individual programs.

**Throughout the document: Shift of coal production and lack of analysis of impact to electric consumers**

The underlying assumption appears to be that any regulations will simply shift coal production from region to region. The document (p 4-198 and in other places) indicates that the "Northern Rocky Mountains and Great Plains", the region that includes Wyoming, will see a 15 percent increase in coal production. However, the underlying assumption that coal demand will simply transfer from one area to another is flawed. First, the markets for coal in different parts of the US are not interchangeable. Second, anything that increases the price of coal makes natural gas a stronger competitor for many electrical production markets. Therefore, increased regulation has the potential to move the energy demand from coal to natural gas, not necessarily to other coal regions. Consequently, the analysis of this issue should include the potential drop in coal production due to price increases from these regulations. Such a price increase could make natural gas a more competitive fuel

especially for electrical generation. The economic impact on the electric consumer should be addressed in this national programmatic EIS.  
A new comprehensive analysis and major revision is needed.

**Throughout the document: The statement that a 1.7% net national coal production increase (P 4-199 and in other places in the document) will result from these new regulations.**

The basis for this result needs to be supported in detail by hard analysis of the markets for coal, not by some simple division of coal production and BTUs.

A new comprehensive analysis and major revision is needed.

We have many other individual comments throughout the document, but given the timeline imposed by OSM we were unable to complete our review.

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west virginia department of environmental protection

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

January 26, 2011

John Craynon  
United State Department of the Interior  
Office of Surface Mining  
Reclamation and Enforcement  
Washington, D.C. 20240

Re: Comments on the Chapter 4 of the Draft EIS for the Stream Protection Rule

Dear Mr. Craynon:

This letter conveys the comments of the West Virginia Department of Environmental Protection, as a cooperating agency, on Chapter 4 of the draft environmental impact statement for the stream protection rule.

As with each of the previous chapters of this draft EIS, the Office of Surface Mining Reclamation and Enforcement has failed to provide the cooperating agencies with an adequate amount of time to review the draft and be able to provide meaningful comments. The WVDEP believes this practice seriously compromises the integrity and validity of the EIS. It is as if the comment process has been purposefully designed to avoid a thorough, hard look at the matters being considered.

With Chapter 4, as with previous chapters, the overall quality of the draft leaves a lot to be desired. For a document that is supposed to support a rule that that is anticipated to make sweeping changes in every technical aspect of the way coal is mined, the document displays very little depth of understanding of technical issues. This is not just the opinion of the WVDEP. We have heard similar comments from OSM technical personnel with long term experience in the regulation of coal mining in the Appalachian region as well as employees of subcontractors OSM has engages to work on the EIS. The characterization of this document as "junk" is not just one person's observation. Instead, this view seems to be universally held, outside OSM's senior management.

We at the WVDEP believe that the preferred alternative identified in Chapter 4 Probably violates OSM's enabling statute, the Surface Mine Control and Reclamation Act of 1977 in several ways. Valley fills for the disposal of excess spoil, which this alternative virtually bans, were clearly contemplated and authorized by SMCRA. Full extraction underground mining, which this alternative would greatly restrict or eliminate was also contemplated and authorized.

Promoting a healthy environment.

Above all, the projected cuts in Appalachian coal production this alternative projects are in direct conflict with one of the overarching goals and purposes of SMCRA. In SMCRA, Congress made an express finding that "expansion of coal mining to meet the Nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment . . ." 30 U.S.C. § 1201(d). Accordingly, it established that one of the express purposes of SMCRA was to:

[A]ssure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy . . .

30 U.S.C. § 1202(f). First among the requirements Congress included in the performance standards section of SMCRA is a mandate that operators "conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel source . . .". 30 U.S.C. § 1265(b)(1).

We understand that OSM's preferred alternative 5 would:

- decrease surface mine coal production in the Appalachian Basin by 30%;
- cost the Appalachian basin 10,749 jobs under the worst case scenario;
- lower an additional 29,000 people in the Appalachian Basin beneath the poverty level;
- cause a 13.1% loss in severance tax; and,
- cause a 11.7% decrease in income taxes.

Consequences like these from OSM's preferred alternative are clearly not what Congress authorized in SMCRA. The legislative history of SMCRA shows that Congress intended the statement of purpose and performance standards quoted above to have real meaning. As adopted, SMCRA was very much a product of the Energy Crisis, which was a dominant factor in the development of economic, social, and environmental policy in its time. Because the nation's most abundant domestic source of energy was and is coal, increased use of coal became the centerpiece of the national policy to gain energy independence at the time of SMCRA's adoption. Senate Report 95-128, p.52. In his energy address to Congress on April 20, 1977, President Carter called for a sixty-five percent increase in coal production over an eight year period. *Id.*; House Report 95-218, p. 186. The regulatory burden SMCRA would impose was seen as consistent with this goal. Despite the addition of this new regulatory burden on coal production, House Report No. 95-218 foresaw an increase in coal production following its adoption:

The future of the coal industry is bright. This is true for a number of sound policy reasons, including the country's need to decrease its reliance on imported oil, conserve its dwindling supply of natural gas and oil, and proceed cautiously with the development of hazardous nuclear technology.

House Report 95-218, p. 57. The Senate Report No. 95-128 forecast no significant disruption of coal production under SMCRA. Senate Report No. 95-128, p. 53. Correspondence from James R. Schlessinger, Assistant to the President, on behalf of the administration, which the committees

of both houses of Congress included in their reports, anticipated greater use of coal under SMCRA with very little of country's reserve being rendered unmineable by the new law:

This Nation cannot expect to increase its reliance on coal unless the mining and burning can be done in a healthful and environmentally sound manner. The passage of clear and effective strip mining legislation is therefore a prerequisite to greater use of coal as part of a sound energy policy.

Negative arguments have characterized the strip mining debate for too long. Adequate safeguards of the land are not in conflict with a policy of expanded coal production. The Nation's coal resource is quite large and **the portion of that resource made unavailable by this legislation is extremely small - less than 1 percent of the resource base and no more than 5 percent of total reserves.**

House Report 95-218, pp. 60, 166; Senate Report No. 95-128, p. 107 (emphasis supplied). At the ceremony President Carter hosted in the Rose Garden at the White House on August 3, 1977 to sign SMCRA into law, the President, himself, indicated a belief that coal production would not be harmed and would, in fact, increase under SMCRA: "I know many here have worked for six years, sometimes much longer, to get a Federal strip mining law which would be fair and reasonable, which would enhance the legitimate and much needed production of coal . . .". In the years preceding the adoption of SMCRA, central Appalachia was the nation's top coal producing region. See, House Report 95-218, p. 72.

In addition to the fact that OSM's preferred alternative is contrary to both OSM's express statutory mandate and the intent of Congress as expressed in the legislative history of SMCRA, OSM's whole course of action in connection with this alternative, this EIS and the rulemaking they are intended to support appears to be contrary to the direction ordained by this current administration as recently as Friday, January 21, 2011. Section 1 of Executive Order 13563, "Improving Regulation and Regulatory Review", 76 Fed. Reg. 3821, begins:

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

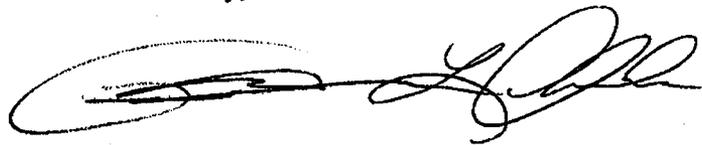
OSM's EIS and proposal eliminates jobs and economic growth in the Appalachian basin. There is no demonstrable benefit to public health, welfare, safety, or the environment OSM has identified. As discussed above, OSM's procedure is designed to eliminate the possibility of meaningful outside participation and exchange of ideas. Instead of identifying the least burdensome approach, OSM is intent on pursuing one of the most burdensome ones. Instead of making a reasoned determination that the benefits of OSM's proposed course of action justify its costs, as Executive Order 13563 further requires, OSM's draft EIS almost entirely avoids the issue.

We at the WVDEP believe that this EIS and the rulemaking OSM intends to pursue are ill advised, not justified in any way by the experience of thirty plus years of regulation of the mining industry under SMCRA and seek to achieve goals that are contrary to the basic premises of SMCRA.

Attached for your consideration are comments addressed to draft Chapter 4 on a line by line basis. As initially drafted, this set of comments had been much lengthier with many more specific comments and criticisms of this material, however, a computer glitch eliminated much of the draft and the inadequate time OSM has allowed for comment has prevented the WVDEP from recreating them.

If you have any questions, please contact me at (304) 926-0499, x 1447 or Lewis Halstead at the same phone number, x 1525.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Clarke', written over a faint circular stamp or watermark.

Thomas L. Clarke

### Comment Form

<b>Title of Document</b>	<b>Chapter 4</b>
<b>Contact Information</b>	
<b>Name</b>	<b>Indiana DNR, Bruce Stevens</b>
<b>Telephone Number</b>	<b>(812) 665-2207</b>
<b>Email</b>	<b>bstevens@dnr.IN.gov</b>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.1.3.1.1.2	4-14	13, 15	<p>This section refers to Table 4.1.3-2 titled "Predicted Regional Stream Impacts (mi/yr) by Alternative". First, the table contains the word "Impacts" while line 13 indicates the table presents the predicted stream "loss". An "impact" does not equate to a "loss" in all instances and this section should be revised to indicate it as such. Second, the number of miles per year of regional stream impact is perplexing. Specifically, for the Illinois Basin, a slightly less number of perennial stream impact is shown than that estimated for intermittent. A very small number of "other" is stated. We are not aware of "other" as a stream type defined within SMCRA and assume this to account for ephemeral streams. Moreover, assuming "other" takes into account ephemeral streams, the numbers appear to be significantly misrepresentative of the Illinois Basin. The public notices for U.S. Army Corps of Engineers 404 permit applications routinely show a much higher percentage of linear feet of ephemeral stream for Indiana coal mining operations than does this table. It is our position this information should again be researched and reconsidered in order to put forth numbers representative of the Illinois Basin.</p>		
4.1.3.1.1.3	4-15	11 – 13	<p>This section discusses underground mining affecting groundwater levels primarily through blasting activity and subsidence. It goes on to state that blasting breaks up the impermeable layers of rock material above the coal seam, thus providing additional flow paths and resulting in dewatering of the aquifer located above the coal seam into the underground mine voids. We are perplexed at this statement. Illinois Basin underground mining activities do not utilize blasting activities to break up impermeable layers of rock material above the</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			regions, one of which is the Illinois Basin. Indiana and Illinois do not approve AOC variances. As a result, the statement about AOC exceptions and documentation being pertinent to the Illinois Basin is perplexing. We suggest reference to the Illinois Basin be removed from this section.		
4.5.5.3	4-213	3 – 5	This section indicates a requirement for areas forested at the time of permit application be reestablished. It is not clear if this is intended to be the exact same areas. Flexibility must be built into any requirements to provide for reforestation to occur but not mandated to the same locales within the permit area. Operations could dictate other areas more suited for reforestation within the permit area. Landowner desires need to be considered as some landowners may want more forest while others may prefer a different land use. As a result, the ability to balance these needs should be employed.		
Overall			Chapter 4 is intended to be a comprehensive document specific to a regulatory approach to be employed across the nation. As outlined in numerous comments, the logic behind many aspects of Chapter 4 is not readily apparent and appears in many cases to be based upon erroneous assumptions, incorrect interpretations, and a lack of understanding of current programmatic practices one region to the other. Based upon these factors, and a lack of information concerning much of the stated narrative, Indiana cannot provide the substantive comments necessary for an issue of this importance. Many factors discussed such as the need for additional data measurements concerning chemistry and biology and significant regulatory reform concerning stream form and function are not provided in a manner that demonstrates or justifies need. We remain unaware of studies relevant to the Illinois Basin supporting the need for such wide sweeping regulatory changes. Our comments in no way should be construed to infer any concurrence with the content of the document or policies that may result from this process.		

**From:** [Craynon, John](#)  
**To:** [Ehret, Paul](#); [Means, Brent P.](#); [Coker, Jeffrey A. "Jeff"](#); [Calle, Marcelo](#)  
**Subject:** FW: Review of Draft Chapter 3 - SMRD Comments  
**Date:** Monday, November 01, 2010 5:00:03 PM  
**Attachments:** [EIS Comment form - Chapter 3.DOCX](#)

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**From:** Stephanie Reed [[stephanie.reed@rrc.state.tx.us](mailto:stephanie.reed@rrc.state.tx.us)]  
**Sent:** Monday, November 01, 2010 6:45 PM  
**To:** Craynon, John  
**Cc:** [gconrad@imcc.isa.us1](mailto:gconrad@imcc.isa.us1); Ehret, Paul; John Caudle; Sharon Walter  
**Subject:** Review of Draft Chapter 3 - SMRD Comments

John, attached are our comments on the draft Chapter 3. Let me know if I can provide any additional clarification.

Regards,  
Stephanie Reed

**DRAFT ENVIRONMENTAL IMPACT STATEMENT  
CHAPTER 3 - AFFECTED ENVIRONMENT  
RAILROAD COMMISSION OF TEXAS, SURFACE MINING AND RECLAMATION DIVISION  
COMMENTS, NOVEMBER 1, 2010**

The evolution of draft Chapter 3 for the EIS is as much a conundrum as draft Chapter 2. Throughout draft Chapter 3, OSM has apportioned detail and depth in the development of the sub-chapters for the Appalachian Region, heavily weighting the focus and attention on mountain top mining. The information for the remaining geographic regions and various other methods of coal and lignite mining qualifies as mere bones lacking flesh, essentially invalidating the need for an EIS for these other regions and mining methods.

As a coordinating agency, the Surface Mining and Reclamation Division (SMRD) of the Railroad Commission of Texas (Commission) has chosen to participate in a process that, from the outset with the first coordinated conference call, seems flawed. With a near impossible time schedule, our review of the extraordinarily voluminous Chapter 3 is rushed and dilute. Coordination continues to be at a minimum in this process. Based on the described schedule, review of the next draft chapters will be even more voluminous and fall on holidays. Nonetheless, the SMRD continues to participate at this time and offers the attached comments on draft Chapter 3. Generally, the statements, data and assumptions provided in draft Chapter 3 are lacking substantiation rendering an educated review of the information infeasible, notwithstanding the impossible review schedule. As with the previous chapter, draft Chapter 3 seems hastily prepared, ridden with typographical and editorial errors. The evaluations provided in the sub-chapters appear to inconsistently characterize the Gulf Coast Region as (1) a general area where coal and lignite mining could potentially occur, or (2) are more specific to the counties where active mining presently occurs. This inconsistency tends to render the generalizations less effective since they are not necessarily representative of the locale of the active mines.

We look forward to getting a larger picture view of where OSM is going with the proposals in this draft document as future chapters are provided for review.

### Comment Form

<b>Title of Document</b>	<b>Review of EIS Draft Chapter 3</b>
<b>Contact Information</b>	
<b>Name</b>	<b>John Caudle, P.E., Director, Surface Mining and Reclamation Division</b>
<b>Telephone Number</b>	<b>512-305-8840</b>
<b>Email</b>	<b>John.caudle@rrc.state.tx.us</b>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.1.9.3.1 Location of Regional Coal Reserves	3-63	Figure 3.1-34	Black shading on this figure should be identified in the legend as Cenozoic alluvium.		
3.1.9.3.4 Extraction Method	3-64	13	The term <i>soft</i> overburden should be revised to <i>unconsolidated</i> overburden.		
3.1.9.3.4 Extraction Method	3-64	14	The reference to <i>Texas Utilities</i> is outdated and should be <i>Luminant Mining Company LLC</i> . Various companies in the Gulf Coast Region, including Luminant, are presently practicing removal of overburden with both the scraper/dozer and dragline methods.		
3.1.9.3.4 Extraction Method	3-64, 3-65	25, 1	The study indicates that there may be mines in Texas that were or were not withheld to avoid disclosure, however, all mines in Texas are subject to disclosure of coal production information, as is the case in all states.		
3.1.9.3.5 Mine Size	3-64	19	It is unclear the source of information for the indication that as of 2008, the Gulf Coast region had 14 surface mines. This would imply that there are 11 surface mines in Texas, which is incorrect.		
3.1.2 Types of Coal and Extraction Methods	3-11	9	The price per ton of sub-bituminous coal does not appear correct.		
3.1.7.7 Mine Reclamation	3-46	4	The word <i>regarding</i> should read <i>regrading</i> .		

**From:** [Craynon, John](#)  
**To:** [Means, Brent P.](#); [Coker, Jeffrey A. "Jeff"](#); [Calle, Marcelo](#); [Ehret, Paul](#)  
**Subject:** FW: Utah's SPR EIS Chapter 3 Surface Water Hydrology Comments  
**Date:** Monday, November 15, 2010 1:49:38 PM  
**Attachments:** [SPREISCh3\\_3.6SurfaceWaterHydro\\_UDOGM.DOCX](#)  
**Importance:** High

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**From:** Ehret, Paul  
**Sent:** Wednesday, November 10, 2010 12:16 PM  
**To:** Craynon, John; Means, Brent P.  
**Cc:** Dale, Debbie  
**Subject:** FW: Utah's SPR EIS Chapter 3 Surface Water Hydrology Comments  
**Importance:** High

Attached are Utah's Surface Water Hydrology comments.

**From:** Peter Brinton [<mailto:peterbrinton@utah.gov>]  
**Sent:** Wednesday, November 10, 2010 11:15 AM  
**To:** Ehret, Paul  
**Cc:** Dana Dean  
**Subject:** Utah's SPR EIS Chapter 3 Surface Water Hydrology Comments

Paul,

Here are Utah's comments and feedback on the Surface Water Hydrology section of Chapter 3 of the SPR EIS. If either you or the contractor have any questions regarding our comments or suggestions, please don't hesitate to contact us.

Thanks.

Peter

Peter Brinton  
Environmental Scientist I  
Utah Division of Oil, Gas & Mining  
Office Phone: 801-538-5258

Peter Brinton  
Environmental Scientist I  
Utah Division of Oil, Gas & Mining  
Office Phone: 801-538-5258

**Comment Form**

<b>Title of Document</b>	Utah Feedback on Surface Water Hydrology Section of Chapter 3 of Deliberative SPR EIS	SPR EIS Chapter 3.6
<b>Contact Information</b>		<b>Contact Information</b>
<b>Name</b>	State of Utah (C/o Dana Dean or Peter Brinton)	Kevin Lundmark
<b>Telephone Number</b>	801-538-5320 or 801-538-5258	
<b>Email</b>	danadean@utah.gov or peterbrinton@utah.gov	

<b>Section</b>	<b>Page #s</b>	<b>Line #s</b>	<b>Comment</b>	<b>Incorporate (Yes/No)</b>	<b>Proposed Disposition</b>
General Comments			<p>Utah Division of Oil, Gas and Mining (UDOGM) has identified some significant deficiencies and errors relating to the characterization of surface water hydrology and the other resources of the "affected environment". These deficiencies are often associated with the incorrect geographical scope originally selected for evaluation of the active coal mining areas in Utah and other parts of the Colorado Plateau coal mining region. For example, the geographic scope omits high-priority Utah coal reserve areas with active mining in the Alton and Kolob coal fields. As a result, the Chapter 3 characterization of surface water hydrology and the other environments and resources described are missing important information and are often incorrect.</p> <p>We have invested serious effort into providing OSM and the contractor with correct information and sources to facilitate the correction of inaccurate statements found in this EIS. Without some serious modifications to the current geographical scope of this EIS as it relates to the Colorado Plateau, any conclusions made in Chapter 4 about impacts to the environment and the coal mining industry in Utah (and other parts of the Colorado Plateau) will be inaccurate. Subsequent decisions dependent on this EIS and affecting Utah and parts of the Colorado Plateau region will be misinformed.</p> <p>In addition to errors noted throughout this section, the hydrology description (3.6.2.2) is so vague that it is difficult to see how it can be of real value for analyzing impacts. The generalizations presented in this section may be correct as written for some area within the Colorado Plateau Region;</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			however, the contractor has not provided references for verification. References are absolutely necessary in this section so that readers may ascertain the subject area(s) for which these generalizations were originally authored.		
Issues Unique to Western States relating to Federal Resources and NEPA			While UDOGM understands that the enormous scope of this EIS may preclude the detailed investigation of resources associated with each coal field in the United States, UDOGM insists that a greater focus on federal coal reserves and resources is essential for adequate NEPA analysis. Proposed federal actions affecting the large federal coal reserves and other extensive federally-managed resources located primarily in the Western United States constitute a significant federal nexus requiring NEPA analysis. As currently written, this EIS does not recognize current and future value of significant federal coal reserves and their associated federally-managed environments.		
Suggestions to Mitigate Errors			<p>The coal bearing regions shown in figures in the hydrology section and other sections of the EIS do not accurately describe the active coal mining regions in Utah and parts of Colorado. Refer to USGS Professional Paper 1625-B (2000) to understand why the existing affected environment boundaries are unrepresentative of Utah coal mining.</p> <p>UDOGM recommends that the authors strongly consider adopting geographic boundaries used by the USGS in their Open File Report series for evaluating coal province hydrology and for other resources. These reports were expressly written with SMCRA and federal coal leasing in mind, and they accurately characterize Utah's active coal mining areas, unlike the current EIS scope boundaries for Utah and Colorado.</p> <ul style="list-style-type: none"> <li>• Water Resource Investigations Open-File Report 84-068</li> <li>• Water Resource Investigations Open-File Report 83-38</li> </ul> <p>Other USGS reports in this series cover Colorado and New Mexico coal fields.</p>		
3.6.0	3-1	13-20	<p>The generalities stated in this introductory paragraph may apply to Appalachia, but do not apply to Utah. Their relevance to other western states is also in question.</p> <p>The "current interest in specific conductance with respect to</p>		

**From:** Craynon, John  
**To:** Means, Brent P.; Calle, Marcelo; Ehret, Paul; Coker, Jeffrey A. "Jeff"  
**Subject:** Fw: Utah's Comments on EIS Chapter 3  
**Date:** Monday, November 01, 2010 1:13:51 PM  
**Attachments:** SPREISCh3 compiled DOGM commentsnew2.DOCX

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----- Original Message -----

From: Dana Dean [<mailto:DANADEAN@utah.gov>]  
Sent: Monday, November 01, 2010 10:01 AM  
To: Craynon, John; Ehret, Paul  
Cc: Angela Nance <[angelanance@utah.gov](mailto:angelanance@utah.gov)>; April Abate <[aprilabate@utah.gov](mailto:aprilabate@utah.gov)>; Daron Haddock <[daronhaddock@utah.gov](mailto:daronhaddock@utah.gov)>; Doug Burnett <[dougburnett@utah.gov](mailto:dougburnett@utah.gov)>; Ingrid Campbell <[ingridwieser@utah.gov](mailto:ingridwieser@utah.gov)>; James Owen <[jamesowen@utah.gov](mailto:jamesowen@utah.gov)>; Jim Smith <[jimsmith@utah.gov](mailto:jimsmith@utah.gov)>; Joe Helfrich <[joehelfrich@utah.gov](mailto:joehelfrich@utah.gov)>; John Baza <[johnbaza@utah.gov](mailto:johnbaza@utah.gov)>; Jo Ogea <[jookea@utah.gov](mailto:jookea@utah.gov)>; Karl Houskeeper <[karlhouskeeper@utah.gov](mailto:karlhouskeeper@utah.gov)>; Kevin Lundmark <[kevinlundmark@utah.gov](mailto:kevinlundmark@utah.gov)>; Pete Hess <[petehess@utah.gov](mailto:petehess@utah.gov)>; Priscilla Burton <[priscillaburton@utah.gov](mailto:priscillaburton@utah.gov)>; Steve Christensen <[stevechristensen@utah.gov](mailto:stevechristensen@utah.gov)>; Steve Demczak <[stevedemczak@utah.gov](mailto:stevedemczak@utah.gov)>; Suzanne Steab <[suzannesteab@utah.gov](mailto:suzannesteab@utah.gov)>; Vickie Southwick <[vickiesouthwick@utah.gov](mailto:vickiesouthwick@utah.gov)>  
Subject: Utah's Comments on EIS Chapter 3

Mr. Craynon:

I have attached Utah's comments regarding Chapter 3 of the Stream Protection Rule Environmental Impact Statement.

We have dedicated as much time as possible to these comments, but we feel that our comments were limited by the short amount of time allowed for review. The information that we were supposed to receive early on October 25th actually arrived late in the afternoon that same day. There were several errors that were changed and the document resent late in the afternoon of the 26th. By not extending our deadline to respond, you seem not to have considered the states' need for adequate time to review.

We strongly suggest you make changes to the geologic information regarding the coal resources in Utah. Much of the information included in Chapter 3 is erroneous, and omits a large amount of federal reserves that are contemplated for surface mining. In particular, the Alton Coal Field in Kane County where a surface mine is slated to begin operations on private land in the next month. The BLM is currently considering a Lease By Application for a large parcel of federal coal adjacent to the current project.

These rule changes are very important to us, because they could facilitate our ability to prevent negative environmental impacts to water resources, if the language is precise and takes into account some of the unique situations created by the geology, geography, and climate of the western states. If things are too focused on climatic and environmental conditions encountered in more easterly states, it could significantly hamper our abilities.

We very much appreciate the opportunity to comment as a Cooperating Agency, and hope that our comments will be carefully considered, and of aid to you in crafting the final EIS document.

Please let me know if you have any questions or concerns regarding our comments.

Thank you,

Dana Dean, P.E.  
Associate Director - Mining  
Utah Division of Oil, Gas, and Mining

(801) 538-5320  
danadean@utah.gov

**Comment Form**

<b>Title of Document</b>	<b>Utah Feedback on Chapter 3 of Deliberative SPR EIS</b>
<b>Contact Information</b>	
<b>Name</b>	<b>State of Utah (C/o Dana Dean or Peter Brinton)</b>
<b>Telephone Number</b>	<b>801-538-5320 or 801-538-5258</b>
<b>Email</b>	<b><u>danadean@utah.gov</u> or <u>peterbrinton@utah.gov</u></b>

<b>Section</b>	<b>Page #s</b>	<b>Line #s</b>	<b>Comment</b>	<b>Incorporate (Yes/No)</b>	<b>Proposed Disposition</b>
General Comments			<p>Utah Division of Oil, Gas, and Mining (UDOGM) has some significant concerns with the scope of this EIS as it pertains to Utah coal fields. These concerns are here explained and simple suggestions are made which should be relatively easy to implement in the EIS.</p> <p>First, UDOGM recently issued a SMCRA permit for a proposed surface mine in an area of southern Utah (Kane County) where production is expected to begin within a few months. UDOG believes that Kane County should be considered within the scope of this EIS because the future surface coal mine will be directly affected by any proposed stream protection rules. It is noted that two Montana counties with future coal mines are also being addressed within the scope of this EIS (3.0.2, page 3-4, lines 4-5).</p> <p>Second, after OSM-approved UDOGM consultation with a coal expert from the Utah Geological Survey (a state sister agency), UDOGM believes that the Utah's active coal mines and coal reserves should be analyzed separately from those of Colorado for reasons discussed in UDOGM's comments. The "Uinta Basin" section (3.2.....) does not adequately (or accurately) describe Utah coal geology, and subsequent sections evaluating other resources using (loosely) this geographical area are unrepresentative of Utah's "affected environment."</p> <p>UDOGM proposes a simple way for the contractor to effectively evaluate both of these important coal bearing areas</p>		<p><a href="https://fs.ogm.utah.gov/PUB/MINES/Coal_RelatecAPS/pubrecmap.pdf">https://fs.ogm.utah.gov/PUB/MINES/Coal_RelatecAPS/pubrecmap.pdf</a> Significant Federal coal reser in the western states, including Utah (%) (UGS)</p> <p>The BLM would be a good cooperating agency to involve, especially for the Mineral Resources secti of both Chapters 4 and 3.</p>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>3.2-1)." In the State of Utah, at least, greater (and sometimes more accurate) detail is needed than is presently provided under the Colorado Plateau coal geology section (see notes in section 3.2.1.3.3).</p> <p>Consider using the USGS-designated hydrology areas 56 and 57 to accurately portray resources in the areas potentially affected by coal mining since previous boundaries in the scope of this EIS provide inaccurate analysis of resources possibly affected by coal mining.</p>		
3.2.2			General – The section heading numbers for this section are fouled. This section would logically be numbered 3.2.2 (not 3.3.2) and subsections would be 3.2.2.1, 3.2.2.2, etc. (not 3.2.1.3, 3.2.1.4, etc.)		
3.3.2 (should be 3.2.2)		Figure 3.2-4	Figure should match description		
3.3.2 (should be 3.2.2)	3-11	19	"coal fields including the <del>Unita</del> Uinta Region, Tongue Mesa Field, Canon City Field, Henry Mountains" Common spelling error that Spell Checkers won't catch, and if set for Auto-Correct, they will replace the correct spelling with the incorrect version.		
3.3.2 (should be 3.2.2)	3-11	20	Several smaller coal fields in Utah are inappropriately lumped together with the "Uinta Coal Basin". The Book Cliffs Coal Field has active coal mining. The Southwestern coal field known as the Alton-Kolob Coal field should be included since a new surface mine was recently permitted here.		
3.3.2 (should be 3.2.2)	3-12	2-6	Figure 3.2-4 is misplaced below the Colorado Plateau header		
3.2.1.3.3 (should be 3.2.2.1.3)	3-14	6-22	<p>The text for this section of the EIS in its entirety was taken from an EPA coalbed methane paper, and contains inherent errors as a result when applied to coal mining. The map associated with this inappropriate description in the original source is also incompatible with the maps generated for this EIS. Hence the incorrect word description.</p> <p>For a more accurate map of coal resources and reserves, please see the 2000 USGS report entitled "Geologic Assessment of Coal in the Colorado Plateau: Arizona, Colorado, New Mexico, and Utah" (Professional Paper 1625-</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>B).</p> <p>The statement that "a very small portion of the basin is in northwestern Colorado" is incorrect, and is a good example of how this description of the Uinta Basin is inadequate for purposes of coal reserves and mining.</p> <p>In Utah, most of the coal mining takes place on the far west end of what is called the "Uinta Coal Basin."</p>		
3.2.1.3.3	3-14	15-17	These two depth estimates are close on the shallow number but not on the deep one. This is likely due to the source – a coalbed methane appendix.		
3.2.1.3.3	3-14		A discussion of the geology of the Southwestern Utah Region (Kaiparowits Plateau) is necessary: the Utah program recently approved a plan for a surface mine in this region and anticipates an application to substantially expand that mine.		
3.2.1.3.3	3-14	20-21	The term "targeted" is incorrect when applied to coal mining. It was taken from a source used in describing coalbed methane production, not coal mining. In Utah and very possibly worldwide, coal mining has occurred at a maximum depth of just over 3,000 ft.		
3.2.3	3-23	4 - 6	<p>The description and map showing the Northern Rocky Mountains and Great Plains Region in Section 3.2.3 does not agree with the description and map in Section 3.1.9.5.1. Are Utah, Idaho, and New Mexico part of the Northern Rocky Mountains / Great Plains Region or in the Colorado Plateau Region?</p> <p>If the Figure 3.2-11 is correct, then replace text with: "The Northern Rocky Mountains and Great Plains Region encompasses the coal-bearing areas of the states of Idaho, Montana, North Dakota, South Dakota, and Wyoming and selected coal-bearing areas in Colorado, New Mexico, and Utah. This region is subdivided into many basins, regions or fields (see Figure 3.2-11)."</p>		
3.3.2	3-41	2, and 6	Spelling correction, "Mollisols"		

Section	Page #s	Line #s	Comment	Author	Incorporate (Yes/No)	Proposed Disposition
			that while bonding may be addressed in the proposed rulemaking, detailed analysis within the EIS is not fully required.			
			Why is effect to coal mining operations and production the foremost consideration of this EIS? Apparently, shifts in coal production are used as a proxy for estimating environmental effects. This approach seems problematic as it suggests that any environmental benefit associated with the proposed rule change would result from the cessation of mining, and does not account for any positive effects associated with the continuation of mining under new regulatory requirements. On the whole, the discussion of impacts cast the alternative reviewed in a negative light. Potential, and sometimes speculative, socio-economic impacts were discussed in great detail, while potential environmental benefits were ignored or given cursory acknowledgment. At worst, portions of the analyses suggest advocacy against additional regulatory requirements proposed in the alternative. There was no consistent organization of impact analyses throughout the section.	Arthur Kleven	Duplicate	Deficiencies in clarity, conciseness and required level of detail have been noted by other reviewers throughout the document and are noted. The EIS Team will work to resolve this deficiency prior to finalization.
Overall comment			All determinations contained in the DEIS need to be explained and supported by information to be contained in the administrative record. As drafted, there are numerous statements that are conclusory and do not appear to be explained, many of which are key elements of the DEIS (see below) and would be vulnerable to challenge absent detailed explanation.	Dana Jacobsen	Duplicate	Deficiencies in clarity, conciseness and required level of detail have been noted by other reviewers throughout the document and are noted. The EIS Team will work to resolve this deficiency prior to finalization.
Overall comment			The description of the proposed action and the analyses of alternatives in the DEIS needs to be better integrated. In the event DOJ needs to defend the EIS having a fully integrated document will assist in defense of the case. For example, examining just alternative 4.4 was very difficult because it was unclear what the alternative included--a simple	Dana Jacobsen	Duplicate	Deficiencies in clarity, conciseness and required level of detail have been noted by other reviewers throughout the document and are noted. The EIS Team will work to resolve this deficiency prior to finalization.

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
					operations.
3.1.1.5	3-10	10	"the DBR DRB to measure..."	UT	Accept.
3.1.2 Types of Coal and Extraction Methods	3-11	9	The price per ton of sub-bituminous coal does not appear correct.	TX	Accept. Use updated price values with date stamps.
3.1.2	3-13	Figure 3.1-6	Anthracite shown in legend, but not actually used in graph, so need to explain why. Again – if printed in b&w, colors won't show up. Use symbols instead.	KJass	Accept.
3.1	3-14 through 3-59		This section, 3.1, contains many inaccuracies relating to mining practices and departures from regulatory terminology. The writers seem to have little knowledge of Appalachian mining practices (and overall surface mining practices) and the Statutory and Regulatory requirements. This should be rewritten by professional engineers, geologists and regulatory experts with a working knowledge of the subject matter. This is a DOI/OSM document and in its present form suggests that the Department and Agency lack regulatory and mining knowledge. This may also be the case for the other sections of the document not reviewed by this reviewer.	Lane-OSM	Agree. This section should be carefully reviewed by ECSI and Morgan Worldwide to ensure consistency with coal mining industry and regulatory program terminology and practice.
3.1.2	3-14	8-9	"Of the estimated demonstrated coal reserves in the of U.S., approximately 68% <del>is</del> are mineable by underground methods, while the remaining 32% are mineable by surface methods." Also, "estimated demonstrated" sounds contradictory.	UT	Accept.
3.1.3.1.	3-14	29-32	Underground mining is not really an alternative to surface mining. The method utilized will be dependent on (feet of) cover and seam thickness rather than ownership issues.	KY	Accept. ECSI/Morgan review should catch these technical issues.
3.1.3.1	3-14	3 <sup>rd</sup> from bottom of page	Change "presents" to "present".	Barclay-OSM	Accept
3.1.3.1	3-15	Figure 3.1-8	Again B&W won't show difference in colors red & blue. Also, red & blue colors not defined – which UG, which surface mined? Also – why not use current (2009) production numbers from	KJass	Agree with concern

### Comment Form

<b>Title of Document</b>	<b>SPR EIS, Chapter 3, Section 3.2 Geology</b>
<b>Contact Information</b>	
<b>Name</b>	<b>OSM EIS Hydro Team Review</b>
<b>Telephone Number</b>	
<b>Email</b>	

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.2	GENERAL		The geology descriptions, at times, are extremely general and, at times, even discuss non-coal geology that will not ever be disturbed when mining coal. Please focus on providing a description of the geology that is/will be affected by coal mining. Some of the geology information is written from in a context of very general distriptions of geology and not from a viewpoint of how the geology relates to the coal measures. For example, page 3021, line 8-10 contains information on Pre-Cambrian strata in the Illinois basin. A google search reveals that this information was taken, pretty much verbatim without quotes or summary, from an abstract titled "Interior Cratonic Basins" edited by Letighton (et.al, 1990). Several sections of this paper were literally, cut and pasted, into the geology section of the EIS without first summarizing the information or placing the information in quotes to show it is being used verbatim. This VERY GENERAL information is on the Illinois basin and not part of the coal measures or really relevant to coal mining. Was this added just as easy "fill" material for a discussion on the Illinois basin? The abstract can be found at <a href="http://sequestration.org/basin.htm">http://sequestration.org/basin.htm</a>	OSM Hydro Team YES	
3.2.3	3-23	10-11	A focused discussion of the Powder River Basin is important, but I believe a standalone discussion of the Fort Union Region (primarily North Dakota) is important. (1) ND is a top 10 coal producing state, where the extensive lignite deposit of the Fort Union Member is mined. (2) The post mining land use in North Dakota is agriculture, in contrast to Wildlife/Grazing in	OSM Hydro Team YES	



# Appendix B

Internal Department of Interior email and  
section of Statement of Work

**From:** [Craynon, John](#)  
**To:** [Varvell, Stephanie L.](#)  
**Subject:** RE: PKS demand for 90 day extension  
**Date:** Friday, September 10, 2010 5:19:55 PM

---

This is very disturbing.....

-----Original Message-----

**From:** Varvell, Stephanie L.  
**Sent:** Friday, September 10, 2010 5:14 PM  
**To:** Sloanhoffer, Nancy E.; Owens, Glenda H.  
**Cc:** Craynon, John; Uranowski, Lois J.; Winters, William R. "Bill"  
**Subject:** PKS demand for 90 day extension

Nancy,

As you know we met this week to flesh out the changes to the project plan and confirm those changes needed to accommodate the contract modification to include the task of developing the alternative analysis. The meeting seemed to go well. This afternoon as a follow up to our newly agreed timeline I called John Maxwell to confirm the dates so that I could put together the new project plan. I was informed that PKS does not agree to the new plan and intends to counter with another request for an extension of 90 days. I was told it would be sent to me by COB today. As of 5:00 p.m. I have not received the demand.

This week OSM invested time and resources in a good faith effort to create a mutually satisfactory plan that would accommodate the contractor's concerns for more time and yet meet our needs. PKS was aware of our desire to come to an agreement on the plan and led me to believe through their participation that they shared that desire. Despite our willingness to task the OSM EIS team with working weekends and over Holidays to accomplish the needed turn arounds they have now reverted to the prior request for a "90 day" extension. I consider this move to be in bad faith and I have nothing good to say about this contractor. Their total lack of project management skills and disregard for our requirements is very disturbing.

I do not believe the Prime understands the seriousness of the situation. If you are of a mind to continue our relationship with this contractor I strongly suggest that OSM require them to obtain a PMP certified, experienced and knowledgeable Project Manager on their team who can manage their side of this project for them. While they want to point at OSM as being at fault regarding our failure to deliver the alternatives, in reality, a PM on their team would have observed the problem, notified the OSM PM, or COR and the issue over the alternative analysis would have been handled within the first week of the contract.

The SOW clearly required project management skills and they responded in the technical proposal suggesting they had experience in creating project plans and in earned value management. As we discussed last week we are in week twelve, on version 11 of the plan and now are being told to abandon the plan entirely. I asked John Maxwell about EVM and he clearly does not know what it is. Additionally, the write up in the technical proposal mischaracterizes EVM as a single dimensional control regarding deliverables. I know that you are aware that Project Management is more than purchasing the latest version of MicroSoft Project. I'm not convinced they know this.

Perhaps we should consider a stop work order until this matter can be resolved. At this point, continuing to meet their requests with no indication that they are considering our needs seems one sided. If there is something I can do to facilitate a solution please let me know.

**SECTION C - SUPPORTING INFORMATION, SPECIFICATIONS, AND REFERENCE  
MATERIALS**

**Office of Surface Mining, Reclamation & Enforcement  
(OSM)**



**Statement of Work  
For the  
Preparation of an  
Environmental Impact Statement**

## **STATEMENT OF WORK – CONTINUED**

In order to expedite the review process, the Contractor shall notify the COR at the time of completion of significant subsections of each document. OSM will then request that 3 hard copies and 15 digital copies be submitted for review and comment.

At the request of the Contractor, the schedule of submissions may be extended in the event that performance is delayed by circumstances beyond the control of, and without fault or negligence on the part of, the Contractor, as determined by the Contracting Officer.

### **D. RELEASE OF INFORMATION**

The Contractor may not disseminate any information concerning the specific project without special written approval of the Contracting Officer.

### **E. TRAVEL**

Travel required in connection with this work order is to be included in the detailed cost breakdown, when the Contractor submits a proposal for the order. Travel costs shall not exceed the FAR 31.205-46, Travel Costs, and Federal Travel Regulations.

### **F. PAYMENT SCHEDULE**

- 9.1 Monthly progress of segments of the DEIS with approved comments - May (meetings including DEIS segment reviews)
- 9.2 Monthly progress of segments of the DEIS with approved comments - June (5%) (meetings including DEIS segment reviews)
- 9.3 Monthly progress of segments of the DEIS with approved comments - July (meetings including DEIS segment reviews)
- 9.4 Monthly progress of segments of the DEIS with approved comments - August (5%) (meetings including DEIS segment reviews)
- 9.5 Monthly progress of segments of the DEIS with approved comments - September (5%) (meetings including DEIS segment reviews). Complete Regulatory Impact Analysis with cost-benefit data.
- 9.6 Monthly progress of segments of the DEIS with approved comments - October (5%) (meetings including DEIS segment reviews)
- 9.7 Monthly progress of segments of the DEIS with approved comments - November (meetings including DEIS segment reviews)

# Appendix C

## Contracting Timeline

11/30/2009	OSM publishes intent to prepare Supplemental Environmental Impact Statement in Federal Register
4/26/2010	OSM solicits contract for an Environmental Impact Statement
4/30/2010	OSM publishes Federal Register notice of intent to prepare an Environmental Impact Statement (superseded) with comments due 6/1/2010
5/11/2010	PKS proposal for EIS contract submitted to OSM
6/7/2010	Contract with PKS signed for 12-month period, 6/1/2010 to 5/31/2011
6/18/2010	OSM publishes Federal Register notice of intent to prepare environmental impact statement with comments due 7/30/2010
8/10/2011	Draft EIS Chapter 1 on Purpose and Need circulated for comment
9/10/2010	PKS Demands 90-Day extension; OSM views this request very negatively
10/5/2010	Draft EIS Chapter 2 providing description of proposed action and alternatives circulated for comment
10/27/2010	Draft EIS Chapter 3 on topography and environment circulated for comment
11/1/2010- 1/26/2011	States submit comments to OSM on draft EIS chapters
1/10/2011	EIS Chapter 4 on environmental consequences, containing job estimates, circulated for comment
2/8/2011	OSM sends Cure Notice to PKS with deadline to cure of 2/23/2011. OSM states that failure to cure by that date gives government the option to terminate for default under Section I, 52.249-8 of the contract.
2/8/2011	House Republicans on the Natural Resources Committee send first letter to OSM asking for information about the Stream Protection Rule
3/21/2011	Mutual agreement to end the contract early between OSM and PKS, reducing the contract's period of performance reduced from 5/31/11 to 3/24/11
11/4/2011	OSM Director Joseph Pizarchik testifies before the House Natural Resources Committee's Subcommittee on Energy and Mineral Resources
11/18/2011	PKS subcontractors testify before the House Natural Resources Committee's Subcommittee on Energy and Mineral Resources
2/15/2012	Republican member presents Appendix D documents during House Natural Resources Committee hearing and questions Secretary Salazar about them



# Appendix D

The following pages present Democratic comments on top of Republican slides that were shown at a Natural Resources Committee hearing on February 15th.

# OSM Statement of Work Authorizing Contact with Coal Companies on Proposed Rule

SECTION C - SUPPORTING INFORMATION, SPECIFICATIONS, AND REFERENCE MATERIALS

Office of Surface Mining, Reclamation & Enforcement  
(OSM)



Statement of Work  
For the  
Preparation of an  
Environmental Impact Statement

STATEMENT OF WORK - CONTINUED

- p. An assessment of the extent of threatened and endangered (T&E) species in coal fields potentially impacted by mining related stream impacts (Source state heritage program databases).
- q. The contractor shall perform all NEPA consultation associated with this project. This is to include but is not limited to Section 7 consultation.
- r. **The Contractor shall identify cumulative effects, to include but not limited to:**
  - i. Review the three (3) most recent reports of the biennial state water quality (303b) reports to identify trends of non-coal mining related impairments within the coal field basins.
  - ii. Provide a narrative of the water quality monitoring requirements, at the program level, from the completion of mining to phase III bond release. OSM will provide the data to the Contractor for comparison and analyses.
  - iii. **An assessment of future mining activity using the coal industry's projection.**
  - iv. A summary of 303d related watershed scale analyses conducted within the last 10 years that are related to coal mine impacts. Provide a comprehensive list of all 303d listed streams within the coal fields along with the names of impairment for such stream. Identify any observed patterns within the list.
  - v. OSM products should be used to support topics in a spatially distributed pattern. Examples include but are not limited to: 303b listed streams, density of

OSM expected the contractor to seek information from coal companies. However, the “Statement of Work” forbid the contractor from disclosing deliberative documents without receiving written approval from OSM. Republicans omitted this text in their slide. It has been added below.

## D. RELEASE OF INFORMATION

The Contractor may not disseminate any information concerning the specific project without special written approval of the Contracting Officer.

# Director Pizarchik threatens 'extreme consequences' if contractors follow Statement of Work

From: Jose Sosa [mailto:jsosa@polikalservices.com]  
Sent: Wednesday, December 15, 2010 3:30 PM  
To: 'Jenkins, Josh'; Joe Zaluski; A Steven Gardner; 'John Morgan'; 'Jeff Baird'; 'Doug Myneer'; 'Liz Edmondson'; 'dobeil@plexsci.com'  
Cc: Sloanhoffler, Nancy R.; Crayton, John; Varvell, Stephanie L.; Randy Sosa; Mike Stanwood; John Maxwell  
Subject: FW: EIS Production Impacts Industry Survey

Team:

There was a request made by ECSI to request feedback from mining industry on the EIS. We asked OSM for guidance and the reply from John Crayton is provided below. **UNDER NO CIRCUMSTANCE IS THE INTERNAL WORKING OF THIS TEAM AND/OR THE RULE TEAM TO BE RELEASED TO OUTSIDE PARTIES. SEE SUGGESTIONS BELOW.**

Please provide acknowledgment and agreement to comply with OSM's request by replying to this email.

Feel free to contact us if you have questions. We appreciate your efforts on this matter.

Jose

From: Crayton, John [mailto:jpcrayton@osmre.gov]  
Sent: Wednesday, December 15, 2010 3:17 PM  
To: Jose Sosa; Varvell, Stephanie L.; Sloanhoffler, Nancy R.  
Cc: John Maxwell; Randy Sosa; Mike Stanwood; Sylveski, Cheryl; Color, Jeffrey A. "Jeff"; Shawley, Dianne H; Owens, Glenda H.  
Subject: RE: EIS Production Impacts Industry Survey

As per my meeting with OSM Director Joe Pizarchik, no part of the SPR rule text or EIS are to be sent to any parties for the purposes of the EIS preparation at any time. He indicated that this direction is non-negotiable, and that violations would have extreme consequences.

His alternative suggestions for how to proceed are two-fold:

1. Contractor team members working with OSM staff should develop our "best estimates" based on sound science and engineering, and provide these as a part of the draft EIS. He and I chatted about the possibility of error, but agreed that the comment period for the draft EIS will give the opportunity for all sides to provide us with additional information. Additionally, he indicated that we should be able to explain exactly how the numbers and assumptions for impacts to coal production were derived, including being able to explicitly list all factors used by the consultants to generate their estimates.
2. The Director suggested that we develop an internal team of mining engineers and other appropriate experts from OSM and other federal agencies to "peer review" the methodology used by the consultants. His suggestion was to include mining engineers in OSM regional and field offices, USGS, BLM and other DOI and non-DOI federal agencies.

My suggestion is that we have a call tomorrow to strategize on how best to proceed.

File:W:\Pelu Kai - OSM\House Committee\Industry survey\FW EIS Production Impacts... 11/16/2011

John R. Crayton, P.E.  
OSM SPR EIS Team Lead  
Office of Surface Mining Reclamation and Enforcement  
Washington, DC  
202-208-2866  
202-617-5002 cell  
202-219-3279 fax  
jrcrayton@osmre.gov

\*For Official Use Only

From: Jeff Baird [mailto:jbaird@engr.com]  
Sent: Wednesday, December 15, 2010 3:17 PM  
To: Jose Sosa; Randy Sosa  
Cc: J. Steven Gardner  
Subject: EIS Production Impacts Industry Survey  
Importance: High

Jose, Randy, Mike and

The attached documents are for your review and comment. We need your input on the proposed rule or Alternative. As you may know, we are currently in the process of gathering evidence necessary to support the proposed rule or Alternative.

Please review the attached documents and provide your comments by 3:00 p.m. EST unless we hear otherwise.

Jeffrey C. Baird  
Senior Project Consultant  
Engineering Consulting Services, Inc.  
Civil - Environmental - Mining - Safety  
340 South Broadway, Suite 200  
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This OSM email approved contact between the contractor and coal companies. However, it did not approve the sharing of drafts of the proposed rule or Environmental Impact Statement.

# Director Pizarchik threatens 'extreme consequences' if contractors follow Statement of Work

From: Jose Sosa [mailto:jsosa@polkainservices.com]  
Sent: Wednesday, December 15, 2010 3:30 PM  
To: 'Jenkins, Josh'; Joe Zaluzki; I. Steven Gardner; 'John Morgan'; 'Jeff Baird'; 'Doug Myrear'; 'Liz Edmondson'; 'dbell@plexsci.com'  
Cc: Sloanhoffor, Nancy E.; Craynon, John; Varvell, Stephanie L.; Randy Sosa; Mike Starwood; John Maxwell  
Subject: FW: EIS Production Impacts Industry Survey

Team:

There was a request made by ECSI to request feedback from mining industry on the EIS. We asked OSM for guidance and the reply from John Craynon is provided below. **UNDER NO CIRCUMSTANCE IS THE INTERNAL WORKING OF THIS TEAM AND/OR THE RULE TEAM TO BE RELEASED TO OUTSIDE PARTIES. SEE SUGGESTIONS BELOW.**

Please provide acknowledgement and agreement to comply with OSM's request by replying to this email.

Feel free to contact us if you have questions. We appreciate your efforts on this matter.

Jose

From: Craynon, John [mailto:john.craynon@osmre.gov]  
Sent: Wednesday, December 15, 2010 3:17 PM  
To: Jose Sosa; Varvell, Stephanie L.; Sloanhoffor, Nancy E.  
Cc: John Maxwell; Randy Sosa; Mike Starwood; Sylvester, Cheryl; Oaker, Jeffrey A. "Jeff"; Shawley, Dianne M; Owens, Glenda H.  
Subject: RE: EIS Production Impacts Industry Survey

As per my meeting with OSM Director Joe Pizarchik, no part of the SPR rule text or EIS are to be sent to any parties for the purposes of the EIS preparation at any time. He indicated that this direction is non-negotiable, and that violations would have extreme consequences.

His alternative suggestions for how to proceed are two-fold:

1. Contractor team members working with OSM staff should develop our "best estimates" based on sound science and engineering, and provide these as a part of the draft EIS. He and I chatted about the possibility of error, but agreed that the comment period for the draft EIS will give the opportunity for all sides to provide us with additional information. Additionally, he indicated that we should be able to explain exactly how the numbers and assumptions for impacts to coal production were derived, including being able to explicitly list all factors used by the consultants to generate their estimates.
2. The Director suggested that we develop an internal team of mining engineers and other appropriate experts from OSM and other federal agencies to "peer review" the methodology used by the consultants. His suggestion was to include mining engineers in OSM regional and field offices, USGS, BLM and other DOI and non-DOI federal agencies.

My suggestion is that we have a call tomorrow to strategize on how best to proceed.

file:/W:/Pala Kai - OSM/House Committee/Industry survey/FW EIS Production Impacts... 11/16/2011

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\*For Official Use Only\*

From: Jeff Baird [mailto:jhbaird@engrservices.com]  
Sent: Wednesday, December 15, 2010 3:17 PM  
To: Jose Sosa; Randy Sosa  
Cc: J. Steven Gardner; John Morgan  
Subject: EIS Production Impacts Industry Survey  
Importance: High

Jose, Randy, Mike and John

The attached documents are for your review and to provide us with your comments and alternatives. As you may need evidence necessary to complete the EIS.

Please review the attached documents by 3:00 p.m. EST unless we hear otherwise.

Jeffrey C. Baird  
Senior Project Coordinator  
Engineering Consulting Services, Inc.  
Civil - Environmental  
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The OSM email here warns the contractor against disclosing drafts of the proposed rule or Environmental Impact Statement. This is consistent with both the Statement of Work and accepted rulemaking practice. OSM wanted the contractor to obtain information from coal companies but not to share deliberative documents prior to the publishing of a proposed rule. Republicans are wrong to assert a contradiction in this instruction.

