Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515–6015

March 18, 2016

Dear Director Pizarchik:

We write in response to your testimony before the House Appropriations Subcommittee on the Interior, Environment, and Related Agencies on March 3, 2016. Specifically, your testimony raised concerns with regard to the Office of Surface Mining and Reclamation Enforcement's (OSMRE) adherence to the direction provided in the Consolidated Appropriations Act of 2016, P.L. 114-113.

The report accompanying P.L. 114-113-requires that OSMRE reengage with states in a meaningful way before finalizing any Stream Protection Rule. Specifically, OSMRE is required to: (1) provide the states with all technical reports, data, analyses, comments received, and *drafts* relative to the environmental reviews, draft and final environmental impacts statements; and (2) meet with any state with primacy upon the request of the state.

The directives were included to address the agency's failure to abide by the obligations under the Memorandum of Understanding between OSMRE and cooperating states, as well as the consultation mandates of the National Environmental Policy Act (NEPA). Over the past several years, testimony and correspondence from states clearly identify OSMRE's systemic failure to satisfy these legal obligations. We remain frustrated by OSMRE's shutting-out of states during this process – especially considering their 35 years of on the ground experience as the front-line regulators under the Surface Mining Control and Reclamation Act for 97 percent of all coal mining operations in the country.

We understand that seventeen states have written to your agency requesting documents associated with the proposed stream protection rule. The states also advised they would be requesting individual meetings with OSMRE after they had a reasonable amount of time to review the material. In response to questions during the March 3 Subcommittee hearing, you declined to answer as to whether OSMRE would meet with states individually, upon their request. Instead, you referred to your proposal in a March 1 letter to states that OSMRE meet jointly at an upcoming annual meeting. You further stated that OSMRE would not include in the administrative record the actual or full comments furnished by a state during this process,

including comments received during any meetings with a state. Rather, you explained that OSMRE would include in the record its own summary of state comments.

It is clear that OSMRE's proposed course of action does not satisfy the requirements of the Consolidated Appropriations Act of 2016. Under the law, any state with primacy is entitled to a meeting upon its request after it has had a reasonable time to review the documents and materials that OSMRE is directed to furnish. A group meeting does not satisfy either the language or intent of the reengagement directive. Moreover, the meetings with states you mentioned in your testimony do not satisfy the directive because they all occurred prior to the states receiving the information required under the state reengagement directive. Finally, the actual comments states furnish to OSMRE during this process —not OSMRE's summaries—must be included in the administrative record to assure transparency and notice. We fail to understand what purpose is served by OSMRE's refusal to include the actual comments from states in the record.

In short, your testimony demonstrates an unwillingness on the part of OSMRE to comply with the direction of the Committee and the very same posture that led to the directive in the Consolidated Appropriations Act of 2016. In accordance with the directive in the Consolidated Appropriations Act of 2016, OSMRE shall afford a state an individual meeting upon such a request after a state has had a reasonable opportunity to review the materials furnished. Please note that the materials produced to these states must include drafts relative to the environmental reviews and draft environmental impact statements. Further, OSMRE shall place in the administrative record the actual comments furnished by any state in the course of the reengagement process.

Sincerely,

Harold Rogers
Member of Congress

Ken Calvert
Member of Congress

Evan Jenkins
Member of Congress

Charles W. Dent
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Henry Cuellar
Member of Congress

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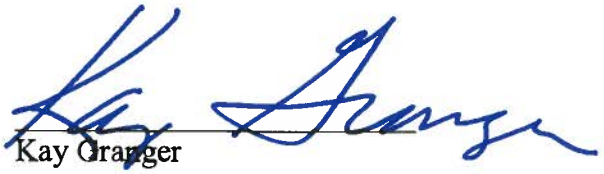
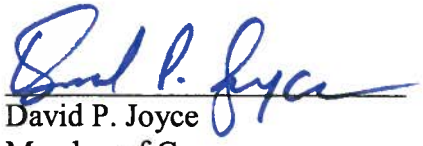


Kay Granger
Member of Congress



David P. Joyce
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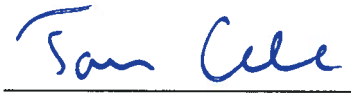

Tom Cole
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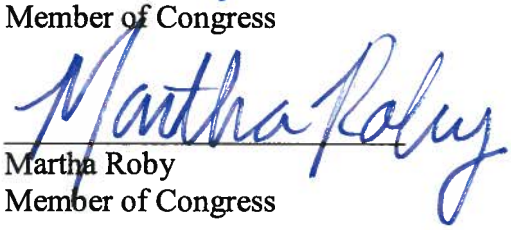

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