



# RAILROAD COMMISSION OF TEXAS

## SURFACE MINING AND RECLAMATION DIVISION

March 12, 2015

**Sent by Email and First Class Mail**

Joe Pizarchik, Director  
Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, MS 202-SIB  
Washington, DC 20240

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

Dear Director Pizarchik:

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

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

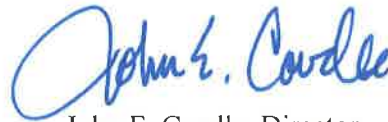
I entered into the MOU in good faith, fully able and willing to participate in review of the draft EIS and provide comments on the chapters that were made available for review. I remained committed to this task throughout 2011 until now, in 2015. At this time, however, I feel that OSMRE's failure to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

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

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

Sincerely,



John E. Caudle, Director  
Surface Mining and Reclamation Division

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