

STATEMENT OF  
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BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
ENERGY AND MINERALS SUBCOMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

FOR THE  
OVERSIGHT HEARING ON:

“WAR ON JOBS: EXAMINING THE OPERATIONS OF THE OFFICE OF SURFACE  
MINING AND THE STATUS OF THE STREAM BUFFER ZONE RULE”

JULY 23, 2013

**I. INTRODUCTION**

Mister Chairman and Members of the Subcommittee, thank you for the opportunity to testify on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding our operations, the status of the Stream Buffer Zone Rule, and equally as important, the bureau’s proposed rulemaking to better protect streams from the adverse effects of coal mining. As always, OSM looks forward to working with you on matters relating to its mission under the Surface Mining Control and Reclamation Act (SMCRA).

Congress gave OSM its regulatory authority and responsibilities nearly 36 years ago when it passed SMCRA. At that time, Congress mandated that OSM strike a balance between protecting the environment and providing for the nation’s energy needs. Specifically, Congress established the bureau to carry out two basic functions. First, we are to ensure that coal mines operate in a manner that protects both people and the environment, and that the land is restored and is as productive after mining as it was before mining. Second, we are to provide an Abandoned Mine Land program to address hazards to people and the environment that were created during the more than two hundred years before SMCRA’s enactment when coal mining was largely unregulated.

As Interior Secretary Sally Jewell has stated, our commitment to the President’s “all of the above” energy strategy will enable us to continue with the safe and environmentally responsible expansion and diversification of our nation’s energy production, further reducing our reliance on foreign oil, and protecting our land and water at the same time. Protecting people, land, water,

and the environment and promoting responsible coal mining are not mutually exclusive. We can have both.

The “all of the above” energy strategy is working. Activity in the Gulf of Mexico exceeds levels before the Deepwater Horizon spill. Onshore, oil production from Federal lands is at its highest level in over a decade.

Although OSM is not involved in coal leasing, which is conducted by the Bureau of Land Management, the Administration is also making more coal available, with the number of producing acres rising four percent from FY 2009 to FY 2012. In fact, in FY 2012, the Bureau of Land Management leased more coal than at any other time since FY 2003.

Under SMCRA, most states have primary responsibility, also known as “primacy” under SMCRA, to protect people and the environment from the adverse effects of surface coal mining. At OSM, we provide assistance to, and oversight of, primacy states to help ensure proper regulation of surface coal mining and the protection of people and the environment. We are also continuing the reclamation of high-priority abandoned mine sites, and are reducing the number of remaining dangerous abandoned mine sites nationwide.

Along with responsible oil and gas development and the growth of clean, renewable energy, the production of coal is an important component of our nation’s energy portfolio, and the responsible development of this important resource is a key part of America’s energy and economic security. Coal will remain an important part of our energy mix for years to come. We are committed to safe, responsible coal production and the jobs it supports.

## **II. UPDATE ON STREAM BUFFER ZONE RULE**

In December 2008, OSM published a final rule that modified the circumstances under which mining can occur in or near streams. The “Stream Buffer Zone Rule” (or “2008 SBZ Rule”) has been challenged by ten organizations in two separate complaints filed in District Court for alleged legal deficiencies.

While the litigation has been pending, the Department of the Interior has identified additional considerations that the 2008 SBZ Rule did not address. As a threshold matter, there have been significant advances in science and technology since the promulgation of the 1983 rule that were not addressed in the 2008 SBZ Rule. Incorporating the most up-to-date science, technology, and knowledge concerning the effects of surface coal mining is essential to developing maximally beneficial modern regulations. In addition, the 2008 SBZ Rule did not provide objective standards for certain important regulatory decisions, such as a requirement to collect baseline information about pre-mining conditions so that the regulatory authority can accurately assess

the impacts of mining and assure proper reclamation. Therefore, OSM began work to modernize its regulations, incorporating new science, technology, and knowledge in areas that can improve, update, and more completely implement SMCRA.

Many scientific advances have occurred in the past 30 years. Under SMCRA, OSM can and should consider those advances when modernizing its rules. The 2008 SBZ Rule, now almost five years old, did not incorporate the most modern technology and science that were available at that time, nor does the rule reflect the scientific advances that have occurred since the rule was promulgated. That is one reason why, combining OSM's on-the-ground experience with peer-reviewed academic study, we are modernizing our rules and using the best available technology and science to improve mining practices in order to minimize and mitigate environmental damage from surface coal mining.

A revised rule that incorporates modern science, technology, and knowledge will enable the coal industry to do a better job of reclaiming the land and restoring natural resources, and in many cases, will lead to that work being done in a more economical and efficient manner. These goals are fully consistent with Congress' mandate and OSM's mission, while also retaining much-needed, well-paying jobs, and generating revenue in the nation's coal-producing regions.

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

OSM will also consider the extensive public and agency comments it has received to date on the Stream Protection Rule. Further, it will consider the benefits, as well as the costs, of the agency's regulatory alternatives. Development of the proposed rule language and the Draft EIS is an iterative and interactive process; we are developing each in concert with the other. The cost/benefit analysis of potential rule changes helps inform the decisions of what should be included in the proposed rule. OSM plans to publish a proposed rule and associated Draft EIS in 2014.

Consistent with SMCRA, the National Environmental Policy Act, the Administrative Procedure Act, and other applicable laws, we will ask interested stakeholders — whether from Congress, industry, environmental organizations, or members of the public — to read and comment on the proposed rule and Draft EIS once those documents have been published. We have received extensive input from the public, states, and other Federal agencies on issues that we will consider

in drafting the proposed rule, including more than 32,000 comments in 2009, and more than 20,000 after we held public scoping meetings in 2010. We look forward to additional public review and comment on the proposed rule and Draft EIS once they are published.

### **III. CONCLUSION**

Thank you for the opportunity to appear before the Committee today to testify on operations of OSM, the Stream Buffer Zone Rule, and the development of OSM's Stream Protection Rule. Our efforts will result in regulatory improvements that will more completely implement the law, make use of the best available science and technology, better protect streams nationwide, and provide greater clarity and certainty to the mining industry and the affected communities.

We remain committed to providing ample opportunity through the rulemaking process for the Congress, public, industry, stakeholders, and others to provide input on the proposed rule that will help us develop a balanced and responsible final rule.

I look forward to working with you to ensure that we protect the nation's land and water while meeting its energy needs.