

***Documents responsive to the February 10, 2011, request from Chairman Hastings for documents related to the Office of Surface Mining, Stream Buffer Zone Rule***

**Volume: 00025866\_Hastings\_001**

	Document Name	Pages	Document Date	Document Type	Document Title	Request 2	Request 3
1	OSM-WDC-B01-00002-000003	6	20101123	LET	Letter of concern about the preliminary SPR DEIS from cooperating agencies to Joe Pizarchik	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2	OSM-WDC-B01-00002-000004	4	20101207	EML	E-mail transmitting letter from Governor of WY re: SPR -- Joe Pizarchik to multiple recipients (ASLM's Office, OS, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3	OSM-WDC-B01-00002-000005	8	20100823	MOU	E-mail transmitting MOU between OSM and Virginia's Department of Historic Resources relating to Stream Protection Rule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4	OSM-WDC-B01-00002-000008	13	20100824	MOU	E-mail transmitting MOU between OSM and Wyoming DEQ relating to the SPR -- Don McKenzie (WY) to Joe Pizarchik et al.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5	OSM-WDC-B01-00002-000012	1	20100823	EML	E-mail from Joe Pizarchik to Virginia Department of Historic Resources concerning SPR/EIS MOU.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6	OSM-WDC-B01-00002-000013	2	20100729	EML	E-mail from Joe Pizarchik to OSM recipients forwarding Alabama's acceptance of invitation to be cooperating agency on SPR EIS.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7	OSM-WDC-B01-00002-000014	2	20100513	AGN	Agenda and Schedule for SPR Concepts Stakeholder Outreach Sessions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8	OSM-WDC-B01-00002-000016	3	20100615	AGN	Draft Agenda for OSM/Western States/Tribes Leadership Meeting 6/15-16/10	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9	OSM-WDC-B01-00002-000019	2	20100708	EML	E-mail from Randal Johnson (Alabama) to Joe Pizarchik, et al., transmitting Alabama's acceptance of invitation to be cooperating agency on the SPR EIS.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10	OSM-WDC-B01-00003-000002	1	20100820	EML	E-mail from Joe Pizarchik to Julie Langan (VA Department of Historic Resources) regarding SPR/EIS MOU.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Document Name	Pages	Document Date	Document Type	Document Title	Request 2	Request 3
11	OSM-WDC-B01-00003-000003	8	20100823	EML	E-mail from Joe Pizarchik to John Craynon (OSM) regarding SPR/EIS MOU between OSM and VA Department of Historic Resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12	OSM-WDC-B01-00003-000004	2	20100729	EML	E-mail from Dana Dean (Utah) to John Craynon/Joe Pizarchik regarding Utah's request to be a cooperating agency on SPR EIS.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13	OSM-WDC-B01-00004-000001	1	20100511	AGN	Agenda and Schedule for SPR Concepts Stakeholder Outreach Session	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14	OSM-WDC-B01-00004-000002	1	20100317	LET	Letter to Joe Pizarchik from environmental groups regarding SPR meeting held on 3-10-10	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15	OSM-WDC-B01-00004-000003	8	20100713	EML	E-mail from Joe Pizarchik to Kathy Selvage (Southern Appalachian Mountain Stewards) regarding request for open house meeting on scope of SPR EIS.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16	OSM-WDC-B01-00004-000004	5	20100712	EML	E-mail from Kathy Selvage (Southern Appalachian Mountain Stewards) to Joe Pizarchik and John Craynon (OSM) requesting open house meeting relating to SPR EIS.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17	OSM-WDC-B01-00007-000167	2	20110118	EML	E-mail from Daniel Kilduff to Joe Pizarchik, et al., re: settlement discussions with SBZ rule litigation plaintiffs	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Total Pages: 69**

**DEPARTMENT OF THE INTERIOR**

**TASKING PROFILE**

**OFFICE OF THE DIRECTOR**

**ACCN#:** ESO-00026082    **Status:** Open    **Fiscal Year:** 2011  
**Document Date:** 02/27/2011    **Received Date:** 02/28/2011    **Due Date:** 03/14/2011    **Action Office:** OSM    **Signature Level:** SS    **Doc Source:** GOV

**To (Recipient):** Salazar, Ken  
**From (Author):** Otter, C.L. Butch; Gregoire, Christine O.  
Chairman  
Western Governor's Association  
1600 Broadway, Suite 1700  
Denver, CO 80202

**Subject Text:** Western Governors' Association (WGA) expresses concerns over recent actions by OSMRE re stream protection rule. WGA feels that OSMRE has not provided sufficient basis for sweeping regulatory changes.  
Enclosed is copy of November 23, 2010 letter from Western states' cooperating agencies to Director Pizarchik on stream protection rule draft EIS.

**Req. Surmames:** IGA1M.SOL

**Mail Carrier:** EMAIL    **Mail Track #:**

**Cross Ref:**

**Copies To:** SIO-OES

**Status Tracking:**

**Correspondence Specialist and Phone:** SIO-OES Lisa Cannuscio/202-208-2443

**Closed  
Comments:**

**Signed:**

November 23, 2010

The Honorable Joseph G. Pizarchik  
Director  
Office of Surface Mining, Reclamation and Enforcement  
U.S. Department of the Interior  
1951 Constitution Avenue, N.W.  
Washington, DC 20240

Dear Director Pizarchik:

We are writing to you as cooperating agencies that are participating in the Office of Surface Mining's development of a draft Environmental Impact Statement (EIS) to accompany a soon-to-be-proposed rule on stream protection. Our role as cooperating agencies, as defined by the memoranda of understanding that each of us entered into with your agency, is to review and comment on those Chapters of the draft EIS that are made available to us (at present, Chapters 2 and 3). Based on our participation to date, we have several serious concerns that we feel compelled to bring to your attention for resolution.

Without rehashing our previously articulated concerns about the need and justification for both the proposed rule and the accompanying EIS, we must object to the quality, completeness and accuracy of those portions of the draft EIS that we have had the opportunity to review and comment on so far. As indicated in the detailed comments we have submitted to date, there are sections of the draft EIS that are often nonsensical and difficult to follow. Given that the draft EIS and proposed rule are intended to be national in scope, we are also mystified by the paucity of information and analysis for those areas of the country beyond central Appalachia and the related tendency to simply expand the latter regional experience to the rest of the country in an effort to appear complete and comprehensive. In many respects, the draft EIS appears very much like a cut-and-paste exercise utilizing sometimes unrelated pieces from existing documents in an attempt to create a novel approach to the subject matter. The result so far has been a disjointed, unhelpful exercise that will do little to support OSM's rulemaking or survive legal challenges to the rule or the EIS.

We also have serious concerns regarding the constrained timeframes under which we have been operating to provide comments on these flawed documents. As we have stated from the outset, and as members of Congress have also recently noted, the ability to provide meaningful comments on OSM's draft documents is extremely difficult with only five working days to review the material, some of which is fairly technical in nature. In order to comply with these deadlines, we have had to devote considerable staff time to the preparation of our comments, generally to the exclusion of other pressing business such as permit reviews. While we were prepared to reallocate resources to review and comment on the draft EIS Chapters, additional time would have allowed for a more efficient use of those resources and for the development of more in depth comments.

There is also the matter of completeness of the draft Chapters that we have reviewed. In the case of both Chapters 2 and 3, there are several attachments, exhibits and studies that were not provided to us as part of that review. Some of these are critical to a full and complete analysis of OSM's discussion in the chapters. OSM has developed a SharePoint site that will supposedly include many of the draft materials, but to date the site is either inoperable or incomplete.

As part of the EIS process with cooperating agencies, OSM committed itself to engage in a reconciliation process whereby the agency would discuss the comments received from the cooperating agencies, especially for purpose of the disposition of those comments prior to submitting them to the contractor for inclusion in the final draft. The first of those reconciliations (which was focused on Chapter 2) occurred via conference call on October 14. The call involved little in the way of actual reconciliation but amounted to more of an update on progress concerning the draft EIS. There was talk about another reconciliation session, but to date this has not occurred. There were also several agreements by OSM during the call to provide additional documents to the states for their review, including a document indicating which comments on Chapter 2 from cooperating agencies were accepted and passed on to the contractor, as well as comments provided by OSM. OSM also agreed to consider providing us a copy of a document indicating those comments that were not accepted. To date, neither of these documents has been provided to us. And even though a draft of Chapter 3 has now been distributed and comments have been provided to OSM, we are still awaiting a reconciliation session on this chapter.<sup>1</sup>

Frankly, in an effort to provide complete transparency and openness about the disposition of our comments, we believe the best route is for OSM to share with us revised versions of the Chapters as they are completed so that we can ascertain for ourselves the degree to which our comments have been incorporated into the Chapters and whether this was done accurately. We are therefore requesting that these revised Chapters be provided to us as soon as practicable.

We understand that OSM is considering further adjustments to the time table for review of additional Chapters of the draft EIS. We are hopeful that in doing so, the agency will incorporate additional time for review by the cooperating agencies, especially given the size and complexity of Chapter 4 and the full draft EIS. Pushing back the time for the completion of these drafts by OSM without additional time being provided for review by the cooperating agencies would be wholly inappropriate. We request that you please provide us with these new time tables as soon as possible so that we can begin our own internal planning.

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<sup>1</sup> We also understand that OSM had planned to contact the states to provide estimates of the additional time and resources that would be required to review/process a permit under the proposed rule. This information would be used by OSM to prepare at least one of the burden analyses that are required by various executive orders as part of federal rulemakings. We now understand that OSM plans to generate these estimates on its own. We are somewhat mystified about how OSM intends to accomplish this without direct state input and urge the agency to reconsider the methodology under which they are currently operating.

You should know that, as we continue our work with OSM on the development of the draft EIS, some of us may find it necessary to reconsider our continued participation as cooperating agencies pursuant to the 30-day renegotiation/termination provision in our MOUs. Under the NEPA guidance concerning the status of cooperating agencies, some of the identified reasons for terminating that status include the inability to participate throughout the preparation of the analysis and documentation as necessary to meet process milestones; the inability to assist in preparing portions of the review and analysis and help resolve significant environmental issues in a timely manner; or the inability to provide resources to support scheduling and critical milestones. As is evident from much of the discussion above, these are some of the very issues with which many of the cooperating agencies are struggling given OSM's time schedule for the EIS and the content of the documents distributed to date. We continue to do our best to meet our commitments under the MOUs but based on our experience to date, this has become exceedingly difficult.

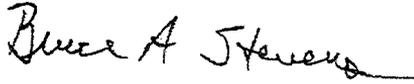
Finally, as you have likely noted throughout the submission of comments by many of the cooperating agencies, there is great concern about how our comments (limited as some of them are due to time constraints for review) will be used or referred to by OSM in the final draft EIS that is published for review. While the MOUs we signed indicate that our participation "does not imply endorsement of OSM's action or preferred alternative", given what we have seen so far of the draft EIS we want to be certain that our comments and our participation are appropriately characterized in the final draft. Furthermore, since CEQ regulations require that our names appear on the cover of the EIS, it is critical that the public understand the purpose and extent of our participation as cooperating agencies.

As it is now, the states are wrestling with the consequences of their names appearing on the EIS, as it would assume tacit approval independent of the comments that have/have not been incorporated into the document. And while the cooperating agency has the authority to terminate cooperating status if it disagrees with the lead agency (pursuant to NEPA procedures and our MOUs), the states realize the importance of EIS review and the opportunity to contribute to, or clarify, the issues presented. We therefore request an opportunity to jointly draft a statement with you that will accompany the draft EIS setting out very specifically the role that we have played as cooperating agencies and the significance and meaning of the comments that we have submitted during the EIS development process.

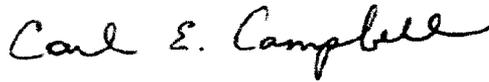
Sincerely,



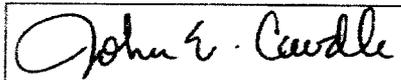
Randall C. Johnson  
Director  
Alabama Surface Mining Commission



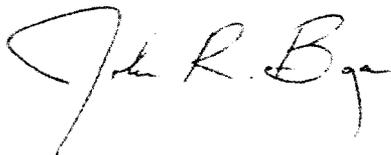
Bruce Stevens  
Director  
Division of Reclamation  
Indiana Department of Natural Resources



Carl E. Campbell  
Commissioner  
Kentucky Department for Natural Resources

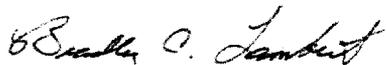


John Caudle  
Director  
Surface Mining and Reclamation Division  
Railroad Commission of Texas

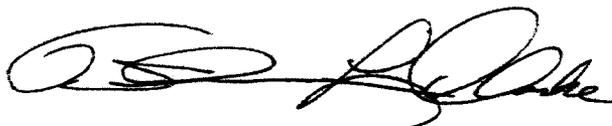


John Baza  
Director

Utah Division of Oil, Gas and Mining



Bradley C. Lambert  
Deputy Director  
Virginia Department of Mines Minerals and Energy



Thomas L. Clarke  
Director  
Division of Mining & Reclamation  
West Virginia Department of Environmental Protection



John Corra  
Director  
Wyoming Department of Environmental Quality

## Pizarchik, Joseph G

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**From:** Pizarchik, Joseph G  
**Sent:** Tuesday, December 07, 2010 7:30 AM  
**To:** Faeth, Lori; Lewis, Wilma; Baca, Sylvia; Hayes, David; Davis, Laura  
**Subject:** FW: Letter from Governor Freudenthal  
**Attachments:** Pizarchik.pdf

FYI

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**From:** Patti Burns [<mailto:pburns@state.wy.us>]  
**Sent:** Monday, December 06, 2010 6:55 PM  
**To:** Pizarchik, Joseph G  
**Cc:** [jackson.lisa@epa.gov](mailto:jackson.lisa@epa.gov); Chris Boswell; Leigh Anne Manlove; Rob Hurless  
**Subject:** Letter from Governor Freudenthal

Director Pizarchik,  
Please see the attached letter from Governor Freudenthal. The original will be sent via US Mail.  
If you need anything further, please contact this office.

Patti Burns  
Governor's Office  
Capitol Building, Room 124  
Cheyenne, WY 82002  
307-777-5647 (phone)  
307-632-3909 (fax)

DAVE FREUDENTHAL  
GOVERNOR



THE STATE OF WYOMING

STATE CAPITOL  
CHEYENNE, WY 82002

## Office of the Governor

December 6, 2010

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

Dear Mr. Pizarchik:

I am writing to you to express my concerns with the process that the Office of Surface Mining (OSM) is undertaking in its preparation of an environmental impact statement (EIS) and its associated "stream protection rule". Our Director of the Department of Environmental Quality recently signed a letter sent to you by a number of cooperating agencies, expressing their concerns with the adverse impacts on the cooperating agencies. I urge you to take them into consideration, as well as the concerns outlined in this letter.

The action OSM is undertaking is a comprehensive rewrite of regulations under the Surface Mining Control and Reclamation Act (SMCRA) not a stream protection rule. The packaging of this major revision to a law that has served the country well for over 40 years as a "stream protection rule" is misleading. Some of the changes being contemplated have broad implications and deserve thoughtful evaluation. We are unaware of any objective data, scientific or otherwise, that supports this level of change to SMCRA.

OSM's rush towards a self-imposed deadline for completing the rulemaking is at the expense of thoughtful discourse as required by National Environmental Policy Act (NEPA). This undue haste is limiting the thoughtful and reasonable "hard look" as required under NEPA. Although OSM had earlier identified an option to apply the regulations only to mountaintop removal operations and operations in steep slopes, that alternative is not discussed in the EIS materials. NEPA requires an EIS to examine all reasonable alternatives to the proposal. If OSM proceeds with this rulemaking, it should consider two additional reasonable alternatives. The first alternative is that the proposed regulations be applied only to mountaintop mining. The second alternative is that the proposed regulations be applied only east of the 100 Meridian. The second alternative would parallel SMCRA's (30 CFR Chapter VII 785.19) current alluvial valley floor regulations which apply only west of the 100 Meridian. Additionally, the Clean Water Act also recognizes the unique differences between the arid west and the eastern part of the U.S. as noted in the NPDES surface discharge regulatory program. OSM should do the same.

The Honorable Joseph G. Pizarchik  
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Page 2

OSM actions consistently appear to avoid or limit public and state comment throughout this rulemaking. Initially the agency tried to avoid rulemaking altogether by asking a federal court to allow it to revise the stream buffer zone rule through a guidance document. This request was denied. Next, OSM denied multiple requests for additional time to comment on their advanced notice of proposed rulemaking on this issue in December, 2009, providing the bare bones minimum period of time required by law, for one of the most complicated rulemaking efforts in OSM's history. The agency's initial scoping notice was so deficient that OSM had to issue a second notice providing more information in June 2010. Scoping meetings were a sham, because the public was not even allowed to speak publicly at the agency's public meetings. The public open house meeting in Gillette, Wyoming, which is the center of 40 percent of the coal production in the US, was held the evening of July 29, 2010. The comment period ended July 30, 2010. This hardly represents time for thoughtful discourse.

This rulemaking may also conflict with state authorities under both the state SMCRA programs and under the Clean Water Act (CWA). OSM does not have the authority to attempt to broaden a state's water quality standards by adding new restrictions on such things as "material damage to the hydrologic balance." There are no federal water quality standards in Wyoming and OSM lacks the authority to establish any. OSM must work through the State rulemaking process since the authority to establish water quality standards rests solely with the state.

OSM cannot do an "end run" around the prohibition against setting water quality standards by requiring state regulatory authorities to establish more stringent "corrective action thresholds" at the direction of OSM. In addition, "enhancement" concepts are likely to conflict with mitigation requirements under the Corps' § 404 program. OSM's proposals have serious potential to directly conflict with and/or duplicate CWA requirements of the state and/or the Corps.

The EIS documents provided by OSM are poorly written, unclear and sometimes internally inconsistent. The alternatives are written with cross references to other alternatives instead of just plainly stating what the agency is proposing. The unreasonably complex process of 5 alternatives with 11 items for each alternative results in 55 options to evaluate. It is simply unmanageable.

Wyoming is a "cooperating agency" in preparation of the EIS. Yet, we do not believe we have been given meaningful opportunity to comment and participate. Sections of the EIS with 25, 50, and even 100's of pages are distributed to the States with only a few days to read, review, and provide comment back to the agency. States have been forced to withdraw staff from permitting and other critical areas in order to have any opportunity to provide feedback to OSM within the required timeframe. Even when states take such measures, meaningful comments cannot be provided in an appropriate manner.

OSM appears to be ignoring the resource implications for these proposed rules. I find this particularly offensive in light of the fact that you are also seeking to significantly reduce OSM's share of funding for our regulatory program.

The Honorable Joseph G. Pizarchik  
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The agency wants massive increase in information and data collection that may not even be useful or practical in improving environmental performance. I see this as a significant resource burden and urge you to consider these impacts on Wyoming. I call on OSM to comply with its obligations under the NEPA and conduct a genuine EIS process where States are engaged in real discussions of the regulatory options and EIS alternatives. I also suggest that OSM extend its deadline so that it can re-examine the "purpose and need" for these rules, provide appropriate scientific and factual information to support a rule change of this magnitude on a national scale, and engage Wyoming and other states in a more meaningful way.

Best regards,

A handwritten signature in black ink, appearing to read "Dave Freudenthal". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dave Freudenthal  
Governor

DF:pjb

## Pizarchik, Joseph G

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**From:** Eaton, Ethel (DHR) [Ethel.Eaton@dhr.virginia.gov]  
**Sent:** Monday, August 23, 2010 2:38 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Craynon, John  
**Subject:** MOU between the Office of Surface Mining Reclamation and Enforcement and the Department of Historic Resources for EIS Activities under NEPA for Stream Protection Rulemaking  
**Attachments:** MOU between OSM and DHR for EIS Activities under NEPA for Stream Protection Rulemaking.pdf

Mr. Pizarchik,

Attached please find a copy of the scanned MOU with the Kathleen S. Kilpatrick's signature as Director of the Department of Historic Resources and Virginia's State Historic Preservation Officer. The hard copies of the signed MOU are being mailed back to you.

We look forward to working with you as a cooperating agency in preparing the EIS for the new stream protection rulemaking.

Ethel R. Eaton, Ph.D., Senior Policy Analyst  
Division of Resource Services and Review  
Virginia Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221  
(804) 367-2323, ext. 112  
(804) 367-2391 (fax)

\*\* Learn more about DHR's [ePIX](#) - Electronic Project Information Exchange \*\*

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Commonwealth of Virginia Department of Historic Resources  
for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Commonwealth of Virginia Department of Historic Resources (VADHR) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531).

Authority for the VADHR to enter into this MOU includes, but is not limited to:

1. National Historic Preservation Act of 1966 (P.L. 89-665), as amended
2. Code of Virginia, Title 10.1, Chapters 22, 23, and 24

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the VADHR written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The VADHR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources and other areas for which the VADHR has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural

and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

All VADHR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on cultural and historic resources, statutory compliance data, and cost data related to the implementation of cultural and historic resources programs for which VADHR has special expertise or jurisdiction;
- b. VADHR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources. VADHR's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, VADHR will review technical documents on impacts to cultural and historic resources and will advise the OSM on the technical adequacy and completeness of these documents.

VADHR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the VADHR.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

- c. Other information based on VADHR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to VADHR upon signature of this MOU and may be updated on a

periodic basis. OSM will provide VADHR all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the VADHR has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the VADHR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the with the exception of each cooperator's comments required to be made public according to law.

### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The VADHR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the VADHR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document

that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the VADHR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the VADHR, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

Commonwealth of Virginia Department of Mines, Minerals and Energy  
1100 Bank Street, Richmond, VA

  
\_\_\_\_\_

Date 9/23/10 \_\_\_\_\_

Kathleen S. Kilpatrick, Director

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_

Date \_\_\_\_\_

Joseph G. Pizarchik, Director

## Pizarchik, Joseph G

---

**From:** McKenzie, Don [dmcken@wyo.gov]  
**Sent:** Tuesday, August 24, 2010 5:56 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Craynon, John; Corra, John; Burbridge, John; Brosius, Becky  
**Subject:** Wyoming/OSM MOU  
**Attachments:** removed.txt; final DEQ OSM MOU drm.pdf; Scanned OSM Director ltr.pdf

Joe,

I have attached scanned versions of the signed MOU and cover letter that were mailed to you today (overnight delivery). I have also enclosed a file of the MOU you can open in Word.

Don

---

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties



# Department of Environmental Quality



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

Dave Freudenthal, Governor

John Corra, Director

August 24, 2010

Joseph G. Pizarchik  
Director  
Office of Surface Mining  
Reclamation and Enforcement  
U.S. Department of the Interior  
1951 Constitution Avenue NW  
Washington D. C. 20240

**RE: OSM/Wyoming Department of Environmental Quality Stream Protection EIS MOU**

Dear Mr. Pizarchik:

The Department of Environmental Quality is returning two signed MOUs for the stream protection EIS. We have made the following changes to the document you provided: included a sovereign immunity statement, added language to preserve the State's ability to comment on the draft EIS, revised the conflict resolution section, formatted the document for easier reference, labeled the concise time line provided as Attachment A and added an Attachment B noting the OSM and Wyoming contacts for the EIS. Please return a signed copy of one of the MOU documents to my attention.

A digital version of the signed document will be e-mailed to you and Mr. John Craynon today.

Sincerely,

John V. Corra  
Director  
Department of Environmental Quality

JVC/DRM/bb

Enclosure

xc: Don McKenzie, Administrator, Land Quality Division  
Jim Uzzell, Administrator, Management Services

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH  
(307) 777-7937  
FAX 777-3610

ABANDONED MINES  
(307) 777-6145  
FAX 777-6462

AIR QUALITY  
(307) 777-7391  
FAX 777-5616

INDUSTRIAL SITING  
(307) 777-7369  
FAX 777-5973

LAND QUALITY  
(307) 777-7756  
FAX 777-5864

SOLID & HAZ. WASTE  
(307) 777-7752  
FAX 777-5973

WATER QUALITY  
(307) 777-7781  
FAX 777-5973



## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Wyoming Department of Environmental Quality

for

EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

1. The purpose of this Memorandum of Understanding (“MOU”) between the Office of Surface Mining Reclamation and Enforcement (“OSM”) and the Wyoming Department of Environmental Quality (“Cooperator”) (collectively, the OSM and the Cooperator shall be referred to as the “Signatories”) establishes responsibilities of each agency concerning preparation of OSM’s environmental impact statement (“EIS”) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (“NEPA”) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (“SMCRA”). This MOU implements NEPA, consistent with the Council on Environmental Quality (“CEQ”) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).
2. Authority for OSM to enter into this MOU includes, but is not limited to:
  - a. SMCRA
  - b. NEPA and implementing regulations, cited above
  - c. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)
3. Authority for the Cooperator to enter into this MOU includes, but is not limited to:
  - a. Wyoming Statute Annotated §§ 35-11-109(a)(ii) & (iii) (2010)

### B. SIGNATORIES’ ROLES AND RESPONSIBILITIES

1. OSM’S ROLE:
  - a. OSM is the lead agency for the federal government’s preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

- b. OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.
- c. OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.
- d. OSM will provide the Signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.
- e. When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.
- f. OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.
- g. In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.
- h. OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.
- i. OSM will provide to the Cooperator written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.
- j. In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

## 2. COOPERATOR'S ROLE:

- a. The Cooperator is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.
- b. The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.
- c. The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the Cooperator has special expertise or jurisdiction. Information, comments, and analysis provided by the Cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which the Cooperator has special expertise or jurisdiction.
- d. All Cooperator input to the process of EIS preparation will be through OSM.
- e. The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the Signatories to this MOU. All requests for release of any information to anyone outside of the Signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.
- f. In particular, the Cooperator will provide appropriate information and comments on the following topics:
  - i. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of

- surface coal mining and reclamation programs for which the Cooperator has special expertise or jurisdiction;
- ii. The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. The Cooperator's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.
  - iii. At the administrative draft stage of the EIS, the Cooperator will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.
  - iv. The Cooperator's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the Cooperator.
  - v. Information, comments, and analysis provided by the Cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which the Cooperator has special expertise or jurisdiction.
  - vi. Other information based on the Cooperator's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.
- g. The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule (see Attachment A). The schedule will be provided to the Cooperator upon signature of this MOU and may be updated on a periodic basis. OSM will provide the Cooperator all updated planning schedules as soon as possible to allow for participation in the process.
  - h. The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.
  - i. The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

### 3. RESPONSIBILITIES OF THE SIGNATORIES:

- a. The Signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.
- b. Each Signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.
- c. For activities related to EIS development, the Signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The Signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.
- d. The Signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the Cooperator has no comment on the material reviewed.
- e. Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the Signatories to perform beyond the respective authority of each, or requires the Signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

### C. TERMS AND CONDITIONS

1. This MOU will take effect immediately upon being executed.
2. Both Signatories must agree to any changes, modifications, and amendments in writing. Either Signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.
3. If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### D. LIMITATIONS

1. All commitments made in this MOU are subject to the availability of appropriated funds and each Signatory's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the Signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both Signatories.
2. This MOU does not direct or apply to any person outside OSM and the Cooperator.
3. This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial

review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

4. This MOU in no way restricts either Signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the Signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

#### E. STIPULATIONS

1. The Signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The Cooperator will perform its duties as a cooperating agency.
2. The Signatories will: Complete tasks mutually agreed to according to the planning schedule which will be provided separately (Attachment A). Each Signatory will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the Cooperator designated representatives. The Signatories will identify their designated representatives by letter.
3. OSM will serve as lead agency for the development of the EIS.

#### F. OTHER PROVISIONS

1. **Authorities not altered.** Nothing in this MOU alters, limits or supersedes the authorities and responsibilities of any Signatory on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Signatories to perform beyond its respective authority.
2. **Financial obligations.** Nothing in this MOU shall require any of the Signatories to assume any obligation or expend any sum in excess of authorization and appropriations available.
3. **Immunity and Defenses Retained.** Each Signatory retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU. The State of Wyoming does not waive sovereign immunity by entering into this MOU and specifically retains immunity and all defenses available to it as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.
4. **Conflict of interest.** The Signatories agree not to utilize any individual for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EIS.
5. **Documenting disagreement or inconsistency.** Where OSM and the Cooperator disagree on significant elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the

Cooperator may document its views and submit them as comments to the Draft EIS and the Proposed/Final EIS.

6. **Management of information.** The Cooperator acknowledges that all data and information provided will become part of the OSM's official record and will be available for public review, except as restricted by the Freedom of Information Act and/or the Privacy Act. The Cooperator agrees that internal working draft documents for the development of the EIS will not be made available for review by individuals or entities other than the Signatories to this MOU. All draft documents are part of the official OSM record and may only be released by OSM to the extent allowed by the Freedom of Information act and/or the Privacy act. The Signatories agree that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public.
7. **Responsibility for decision making.** While the Signatories agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that the OSM retains final responsibility for the decisions identified in the EIS.

#### **G. AGENCY REPRESENTATIVES**

1. Each Party will designate a representative and alternate representative, as described in Attachment B, to ensure coordination between the Cooperator and OSM during the planning process. Each Party may change its representative at will by providing written notice to the other Party.

#### **H. ADMINISTRATION OF THE MOU**

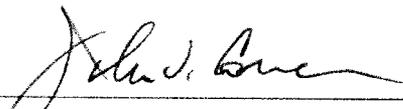
1. **Approval.** This MOU becomes effective upon signature by the authorized officials of all the Parties.
2. **Amendment.** This MOU may be amended through written agreement of all Signatories.
3. **Termination.** If not terminated earlier, this MOU will end when the Final EIS is issued by OSM. Any Party may end its participation in this MOU by providing written notice to the other Party.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

4. **Entirety of Agreement.** This MOU, including Attachments A and B, consisting of (11 pages represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

The Signatories have executed this MOU on the dates shown below.

Wyoming Department of Environmental Quality  
122 West 25<sup>th</sup> Street, Cheyenne, WY

  
\_\_\_\_\_  
John Corra, Director

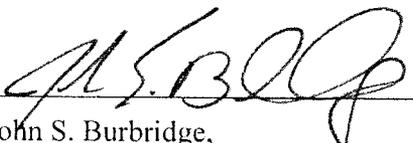
Date 8/24/10

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_  
Joseph G. Pizarchik, Director

Date \_\_\_\_\_

Approval as to Form:

  
\_\_\_\_\_  
John S. Burbridge,  
Senior Assistant Attorney General

Date 8.24.10

**ATTACHMENT A**  
Concise Timeline  
Stream Protection Rule EIS  
August 16, 2010

- 8/25/2010 Signed MOUs due from cooperating agencies
- 8/30/2010 Meeting/telecom with cooperating agencies during this week
- Responsibilities
  - Expectations
  - Review of Chapter 1
- 8/31/2010 Scoping report provided by contractor to OSM for review
- 9/9/2010 Chapter 2 (Description of Proposed Action and Alternatives) provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 9/15/2010 OSM approves scoping report.
- 9/17/2010 Comments on Chapter 2 due to OSM from cooperating agencies and internal reviewers.
- 9/18/2010 OSM submits consolidated comments on Chapter 2
- 10/21/2010 Chapter 3 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 10/29/2010 Comments on Chapter 3 due to OSM from to cooperating agencies and internal reviewers.
- 11/1/2010 OSM submits consolidated comments on Chapter 3
- 11/5/2010 Chapter 4 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 11/15/2010 Comments on Chapter 4 due to OSM from to cooperating agencies and internal reviewers.
- 11/16/2010 OSM submits consolidated comments on Chapter 4
- 11/19/2010 Preliminary draft EIS (PDEIS) sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.
- 11/29/2010 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.

11/30/2010 OSM submits consolidated comments on PDEIS to contractor

12/6/2010 OSM to schedule meeting/telecom with cooperating agencies

1/5/2011 Contractor to hold reconciliation meeting with OSM and cooperating agencies (3 day meeting)

1/19/2011 Revised PDEIS sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.

1/27/2011 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers

1/28/2011 OSM submits consolidated comments on PDEIS to contractor

2/4/2011 Final camera-ready DEIS provided to OSM

**ATTACHMENT B**  
Agency Representatives

**Office of Surface Mining Reclamation and Enforcement**

Primary Representative: John R. Craynan, P.E., Chief, Division of Regulatory Support  
(202) 208-2866

**State of Wyoming**

Primary Representative: Donald R. McKenzie, Administrator, Land Quality Division  
(307) 777-7046

## Pizarchik, Joseph G

---

**From:** Pizarchik, Joseph G  
**Sent:** Monday, August 23, 2010 3:35 PM  
**To:** 'Eaton, Ethel (DHR)'  
**Cc:** Craynon, John  
**Subject:** RE: MOU between the Office of Surface Mining Reclamation and Enforcement and the Department of Historic Resources for EIS Activities under NEPA for Stream Protection Rulemaking

Dr. Eaton:

Thank you for your interest. The Office of Surface Mining Reclamation and Enforcement (OSM) looks forward to working together with the Virginia's Department of Historic Resources and its State Historic Preservation Officer. John Craynon of my staff has the lead on the draft environmental impact statement for OSM and likely will be in touch.

Sincerely,

Joseph G. Pizarchik

---

**From:** Eaton, Ethel (DHR) [<mailto:Ethel.Eaton@dhr.virginia.gov>]  
**Sent:** Monday, August 23, 2010 2:38 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Craynon, John  
**Subject:** MOU between the Office of Surface Mining Reclamation and Enforcement and the Department of Historic Resources for EIS Activities under NEPA for Stream Protection Rulemaking

Mr. Pizarchik,

Attached please find a copy of the scanned MOU with the Kathleen S. Kilpatrick's signature as Director of the Department of Historic Resources and Virginia's State Historic Preservation Officer. The hard copies of the signed MOU are being mailed back to you.

We look forward to working with you as a cooperating agency in preparing the EIS for the new stream protection rulemaking.

Ethel R. Eaton, Ph.D., Senior Policy Analyst  
Division of Resource Services and Review  
Virginia Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221  
(804) 367-2323, ext. 112  
(804) 367-2391 (fax)

\*\* Learn more about DHR's [ePIX](#) - Electronic Project Information Exchange \*\*

## Pizarchik, Joseph G

---

**From:** Pizarchik, Joseph G  
**Sent:** Thursday, July 29, 2010 4:34 PM  
**To:** Craynon, John  
**Cc:** Uranowski, Lois J.; Winters, William R. "Bill"; Owens, Glenda H.  
**Subject:** FW: Response to invitation to serve as cooperating agency on EIS  
**Attachments:** Director Pizarchik.PDF

---

**From:** Johnson, Randall [<mailto:Randall.Johnson@asmc.alabama.gov>]  
**Sent:** Thursday, July 08, 2010 2:18 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Wilson, Sherry; Craynon, John  
**Subject:** Response to invitation to serve as cooperating agency on EIS

Director

Attached is our response to the invitation to serve as a cooperating agency on the EIS.

---

**Alabama Surface Mining Commission**  
**Dr. Randall Johnson**

*Director*

[randy.johnson@asmc.alabama.gov](mailto:randy.johnson@asmc.alabama.gov)

P.O. Box 2390

Jasper AL 35502-2390

tel: 205.221.4130

fax: 205.221.5077

mobile: 205.300.6299

Web Site: [surface-mining.alabama.gov](http://surface-mining.alabama.gov)

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**STATE OF ALABAMA**  
**SURFACE MINING COMMISSION**

P.O. BOX 2390 - JASPER, ALABAMA 35502-2390  
(205) 221-4130 • FAX: (205) 221-5077

July 8, 2010

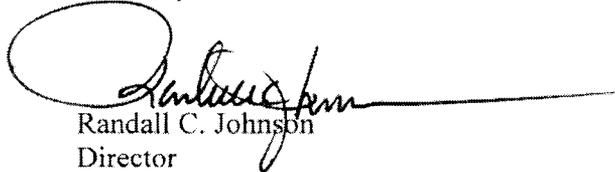
Mr. Joseph G. Pizarchik, Director.  
United States Department of Interior Office of Surface Mining  
Reclamation and Enforcement  
Office Of The Director  
1951 Constitution Ave N.W.  
Washington, D.C. 20240

Dear Mr. Pizarchik:

We accept your invitation to participate as a State cooperating agency in the preparation of the Environmental Impact Statement (EIS) on proposed stream protection measures contingent on financial demands of this duty.

As you are aware, the Administration, through the Office of Surface Mining Reclamation and Enforcement, is proposing to reduce grant allocations to state Title V regulatory programs despite increased demands on resources. Given these financial pressures we cannot commit fully to this endeavor until we know the demands on resources that will be involved. We will assess these needs fully upon clarification of our role in this process.

Sincerely,

  
Randall C. Johnson  
Director

/arm

**Agenda and Schedule**  
**Stream Protection Rulemaking Concepts ~~Meeting~~**  
**Thursday, May 13, 2010 1:00pm to 4:30pm**  
**Office of Surface Mining Reclamation and Enforcement (OSM)**  
**Western Region Office**  
**1999 Broadway, Denver, CO**  
**Clear Creek Conference Room (33<sup>rd</sup> floor)**

*stakeholder outreach  
sessions*

**Agenda**

Presentation of Stream Protection Rulemaking Concepts by OSM Director Joe Pizarchick

The concepts and other information are contained in the Notice of Intent to prepare an environmental impact statement (EIS) for the stream protection rule published in the Federal Register on April 30, 2010, 75 FR 22723 (04/30/2010)  
[<http://edocket.access.gpo.gov/2010/pdf/2010-10091.pdf>].

Feedback to OSM on Stream Protection Rulemaking Concepts by Attendees

**OSM Representatives**

1. Joseph Pizarchik, OSM Director
2. John Craynon, Chief, Regulatory Support, Washington, D.C.
3. Paul Clark, Hydrologist, Western Region Program Support Division
4. Marcelo Calle, Hydrologist, Western Region Program Support Division
5. Mychal Yellowman, Engineer, Western Region Program Support Division
6. Richard Holbrook, Manager, Western Region Program Support Division

**Attendees:**

1. Doug Larson, Executive Director, Western Interstate Energy Board
2. Russ Kirkham, Program Manager, Alaska Regulatory Program, Department of Natural Resources
3. Dave Berry, Director, Office of Mined Land Reclamation, Division of Reclamation, Safety and Mining
4. Ed Coleman, Bureau Chief, Montana Department of Environmental Quality, Industrial and Energy Minerals Bureau
5. Chris Yde, Program Manager, Montana Department of Environmental Quality, Montana Coal Program
6. Chuck Thomas, Bureau Chief, New Mexico Mining and Minerals Division Mine Reclamation Bureau
7. Dean Moos, Assistant Director, North Dakota Public Service Commission Reclamation Division
8. Dana Dean, Associate Director, Mining, Utah Division of Oil Gas and Mining

9. Don McKenzie, Administrator, Wyoming Land Quality Division, Department of Environmental Quality
10. Kathy Ogle, Hydrologist, Wyoming Land Quality Division, Department of Environmental Quality
11. Leah Krafft, Program Principal, Wyoming Water Quality Division, Department of Environmental Quality

DRAFT  
**Agenda**

**OSM/Western States/Tribes Leadership Meeting  
Salt Lake City, UT - Hilton City Center**

**June 15 & 16, 2010**

**June 15, 2010, Tuesday**

- 8:00 - 8:10 Welcome and Introductions - John Baza, Director Utah Division of Oil, Gas & Mining
- 8:10 – 8:30 Meeting Purpose – Doug Larson, Executive Director WIEB  
Allen Klein, Western Regional Director OSM
- 8:30 – 9:00 Appalachian GeoMine Pilot Project - Billie Clark
- 9:00 – 9:30 IMCC Geospatial Concept- Greg Conrad
- 9:30 – 9:45 TIPS/Tech Transfer/NTTP - Billie Clark
- 9:45 - 10:00 Break**
- 10:00 – 10:45 Immediate Stream Protection Measures- Bob Postle
- 10:45 – 11:00 2009 State/Tribal Regulatory Grants/Deobligations - Jim Fulton
- 11:00 – 11:30 Status Report on CCB policy developments– Rick Holbrook
- 11:30 - 1:00 Lunch**
- 1:00 – 2:00 OSM Director Pizarchik  
OSM Initiatives current and future  
2011 Budget – Plans for program cost recovery/  
Regulatory Grant allocation plans  
Stream Protection Rulemaking and EISupdate

Certified States legislation

- 2:00 – 3:00            Update on Oversight Improvement - Allen Klein  
                                 Inspection Methodology  
                                 Collection, analysis, and use of oversight data  
                                 Oversight outreach and communication  
                                 Oversight corrective actions  
                                 Off-site impacts analysis  
                                 Directive Reg-8 revision  
                                 Directive INE-35 revision  
                                 Increased Oversight Inspections – Jeff Fleischman  
                                 National Priority Reviews  
                                 AOC – Bob Postle  
                                 Bond Calculations - Jeff Fleischman
- 3:00 – 3:15            **Break**
- 3:30 - 5:00            AML Program Updates – Jim Fulton/Al Whitehouse  
                                 Letters under 30 CFR 884 program changes  
                                 Training: for required amendments  
                                 OSM Directive AML-22, Evaluation of AML Programs  
                                 AMLIS  
                                 Emergency program transition  
                                 AML FAM changes

**GROUP DINNER – Arranged by Utah Division of Oil, Gas & Mining**

**June 16, 2010, Wednesday**

- 8:00 – 9:30            States/Tribe Meeting
- 9:30 - 10:00           States/Tribe feedback
- 10:00 – 10:15           Break**
- 10:15 – 11:30           Overview Reports of Regulatory and AML State and  
                                 Tribal Program issues/developments/concerns:  
                                 • AK  
                                 • CO

- MT
- NM
- ND
- UT
- WY
- Navajo
- Hopi
- Crow

**11:30 – 1:00**

**Lunch**

1:00 - 2:00

Continuation of State and Tribal Overviews

2:00 – 3:00

Wrap-up / action items

Al Klein / Doug Larson

## Pizarchik, Joseph G

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**From:** Johnson, Randall [Randall.Johnson@asmc.alabama.gov]  
**Sent:** Thursday, July 08, 2010 2:18 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Wilson, Sherry; Craynon, John  
**Subject:** Response to invitation to serve as cooperating agency on EIS  
**Attachments:** Director Pizarchik.PDF

Director

Attached is our response to the invitation to serve as a cooperating agency on the EIS.

---

**Alabama Surface Mining Commission**  
**Dr. Randall Johnson**

*Director*

[randy.johnson@asmc.alabama.gov](mailto:randy.johnson@asmc.alabama.gov)

P.O. Box 2390

Jasper AL 35502-2390

tel: 205.221.4130

fax: 205.221.5077

mobile: 205.300.6299

Web Site: [surface-mining.alabama.gov](http://surface-mining.alabama.gov)

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**STATE OF ALABAMA**  
**SURFACE MINING COMMISSION**

P. O. BOX 2390 - JASPER, ALABAMA 35502-2390  
(205) 221-4130 • FAX: (205) 221-5077

July 8, 2010

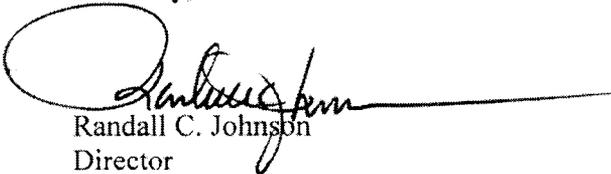
Mr. Joseph G. Pizarchik, Director.  
United States Department of Interior Office of Surface Mining  
Reclamation and Enforcement  
Office Of The Director  
1951 Constitution Ave N.W.  
Washington, D.C. 20240

Dear Mr. Pizarchik:

We accept your invitation to participate as a State cooperating agency in the preparation of the Environmental Impact Statement (EIS) on proposed stream protection measures contingent on financial demands of this duty.

As you are aware, the Administration, through the Office of Surface Mining Reclamation and Enforcement, is proposing to reduce grant allocations to state Title V regulatory programs despite increased demands on resources. Given these financial pressures we cannot commit fully to this endeavor until we know the demands on resources that will be involved. We will assess these needs fully upon clarification of our role in this process.

Sincerely,



Randall C. Johnson  
Director

/arm

## Pizarchik, Joseph G

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**From:** Pizarchik, Joseph G  
**Sent:** Friday, August 20, 2010 12:49 PM  
**To:** 'Langan, Julie (DHR)'  
**Cc:** Craynon, John  
**Subject:** RE: MOU

Dear Ms. Langan:

Thank you for your inquiry. The area for the authority for DHR to sign was left blank by the Office of Surface Mining Reclamation and Enforcement because we are not knowledgeable about your agencies legal authority. We thought it was best for you all to complete that section before signing the MOU.

Sincerely,

Joseph G. Pizarchik  
Director, Office of Surface Mining Reclamation and Enforcement  
US Department of the Interior

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**From:** Langan, Julie (DHR) [<mailto:Julie.Langan@dhr.virginia.gov>]  
**Sent:** Friday, August 20, 2010 11:44 AM  
**To:** Pizarchik, Joseph G  
**Subject:** MOU

DHR has received the MOU for signature. Ethel Eaton is out of the office today due to illness, so I was going to have it signed in her absence. I am wondering if something is missing from page 1 where the authority for DHR to participate has not been inserted?

Many thanks.

Julie V. Langan  
Director, Division of Resource Services & Review  
Virginia Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221  
(804) 367-2323 ext. 155  
Fax: (804) 367-2391  
[www.dhr.virginia.gov](http://www.dhr.virginia.gov)

\*\* Learn more about DHR's [ePIX](#) - Electronic Project Information Exchange \*\*

## Pizarchik, Joseph G

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**From:** Pizarchik, Joseph G  
**Sent:** Monday, August 23, 2010 3:36 PM  
**To:** Craynon, John  
**Subject:** FW: MOU between the Office of Surface Mining Reclamation and Enforcement and the Department of Historic Resources for EIS Activities under NEPA for Stream Protection Rulemaking  
**Attachments:** MOU between OSM and DHR for EIS Activities under NEPA for Stream Protection Rule-making.pdf

John:

Please handle. Thanks.

---

**From:** Eaton, Ethel (DHR) [<mailto:Ethel.Eaton@dhr.virginia.gov>]  
**Sent:** Monday, August 23, 2010 2:38 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Craynon, John  
**Subject:** MOU between the Office of Surface Mining Reclamation and Enforcement and the Department of Historic Resources for EIS Activities under NEPA for Stream Protection Rulemaking

Mr. Pizarchik,

Attached please find a copy of the scanned MOU with the Kathleen S. Kilpatrick's signature as Director of the Department of Historic Resources and Virginia's State Historic Preservation Officer. The hard copies of the signed MOU are being mailed back to you.

We look forward to working with you as a cooperating agency in preparing the EIS for the new stream protection rulemaking.

Ethel R. Eaton, Ph.D., Senior Policy Analyst  
Division of Resource Services and Review  
Virginia Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221  
(804) 367-2323, ext. 112  
(804) 367-2391 (fax)

\*\* Learn more about DHR's [ePIX](#) - Electronic Project Information Exchange \*\*

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Commonwealth of Virginia Department of Historic Resources  
for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Commonwealth of Virginia Department of Historic Resources (VADHR) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531).

Authority for the VADHR to enter into this MOU includes, but is not limited to:

1. National Historic Preservation Act of 1966 (P.L. 89-665), as amended
2. Code of Virginia, Title 10.1, Chapters 22, 23, and 24

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the VADHR written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The VADHR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources and other areas for which the VADHR has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural

and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

All VADHR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on cultural and historic resources, statutory compliance data, and cost data related to the implementation of cultural and historic resources programs for which VADHR has special expertise or jurisdiction;
- b. VADHR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources. VADHR's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, VADHR will review technical documents on impacts to cultural and historic resources and will advise the OSM on the technical adequacy and completeness of these documents.

VADHR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the VADHR.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

- c. Other information based on VADHR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to VADHR upon signature of this MOU and may be updated on a

periodic basis. OSM will provide VADHR all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the VADHR has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the VADHR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The VADHR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the VADHR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document

that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the VADHR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the VADHR, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

Commonwealth of Virginia Department of Mines, Minerals and Energy  
1100 Bank Street, Richmond, VA

  
\_\_\_\_\_

Date 9/23/10 \_\_\_\_\_

Kathleen S. Kilpatrick, Director

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_

Date \_\_\_\_\_

Joseph G. Pizarchik, Director

## Pizarchik, Joseph G

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**From:** Dana Dean [DANADEAN@utah.gov]  
**Sent:** Thursday, July 29, 2010 5:18 PM  
**To:** Craynon, John; Pizarchik, Joseph G  
**Cc:** John Baza  
**Subject:** Request for Coop. Agcy Status  
**Attachments:** 20100729143143.pdf

Gentlemen,

Please see the attached request, sent by post this afternoon.

Thank you,

Dana Dean, P.E.  
Associate Director - Mining  
Utah Division of Oil, Gas, and Mining  
(801) 538-5320  
[danadean@utah.gov](mailto:danadean@utah.gov)



ION M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

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

MICHAEL R. STYLER  
*Executive Director*

JOHN R. BAZA  
*Division Director*

July 28, 2010

Joe Pizarchik, Director  
Office of Surface Mining  
Reclamation and Enforcement  
Washington, D.C., 20240

Dear Mr. Pizarchik:

In response to your letter of June 22, 2010, I am requesting that the Utah Division of Oil, Gas and Mining (OGM) be considered for cooperating agency status in preparing an Environmental Impact Statement (EIS) with the Office of Surface Mining Reclamation and Enforcement (OSM). The EIS has been explained as an effort to analyze the effects of potential rule revisions under the Surface Mining Control and Reclamation Act of 1977 to improve protection of streams from the adverse impacts of surface coal mining operations.

We have read the Notice of Intent to prepare an EIS (published April 30, 2010) and have supplied comments to OSM as outlined in the Notice. OGM feels that the chance to give input into the EIS process will be valuable for both agencies.

The meeting you held in Denver on June 17, 2010 was very productive and the varying ideas and opinions expressed there revealed a need for input from differing perspectives and needs. As the agency that will be responsible for enforcing the revised rules in conditions that differ greatly from other areas of the country, we feel it is imperative that we have an opportunity to aid OSM in crafting the EIS.

Please advise us as to the steps we need to take to develop and adopt a Memorandum of Understanding with you for this project. If you have any questions or would like to further discuss this request, you may contact me at (801) 538-5334 ([johnbaza@utah.gov](mailto:johnbaza@utah.gov)), or Dana Dean at (801) 538-5320 ([danadean@utah.gov](mailto:danadean@utah.gov)).

Thank you for this opportunity, we look forward to working with you.

Sincerely,

John R. Baza  
Director

an

cc: Jim Fulton

1594 West North Temple, Suite 200, Salt Lake City, UT 84114-5801  
General Office, P.O. Box 145801, Salt Lake City, UT 84114-5801  
telephone (801) 538-5340 • facsimile (801) 359-3940 • TTY (801) 538-7458 • [www.ogm.utah.gov](http://www.ogm.utah.gov)

**Agenda and Schedule**  
**Stream Protection Rulemaking Concepts Meeting**  
**Tuesday, May 11, 2010 1:00pm to 4:00pm**  
**Office of Surface Mining Reclamation and Enforcement (OSM)**  
**Western Region Office**  
**1999 Broadway, Denver, CO**  
**Clear Creek Conference Room (33<sup>rd</sup> floor)**

*Stakeholder Outreach  
Session*

**Agenda**

Presentation of Stream Protection Rulemaking Concepts by OSM Director Joe Pizarchick

The concepts and other information are contained in the Notice of Intent to prepare an environmental impact statement (EIS) for the stream protection rule published in the Federal Register on April 30, 2010, 75 FR 22723 (04/30/2010)  
[<http://edocket.access.gpo.gov/2010/pdf/2010-10091.pdf>].

Feedback to OSM on Stream Protection Rulemaking Concepts by Attendees

**OSM Representatives**

1. Joseph Pizarchik, OSM Director
2. John Craynon, Chief, Regulatory Support, Washington, D.C.
3. Paul Clark, Hydrologist, Western Region Program Support Division
4. Marcelo Calle, Hydrologist, Western Region Program Support Division
5. Mychal Yellowman, Engineer, Western Region Program Support Division
6. Richard Holbrook, Manager, Western Region Program Support Division

**Attendees:**

1. Roger Singer, Sierra Club Regional Representative, Colorado

March 17, 2010

Joe Pizarchik  
Director  
Office of Surface Mining Reclamation and Enforcement  
South Interior Building, Room 233  
1951 Constitution Avenue, NW  
Washington, DC 20240

2010 MAR 24 AM 9:42

Re: Our meeting on March 10, 2010

Dear Mr. Pizarchik:

Thank you for taking the time to meet with us in Washington DC last week.

It was very useful to hear updates on the various aspects of work that the Department of the Interior and the Office of Surface Mining Reclamation and Enforcement (OSMRE) are undertaking concerning mountaintop removal (MTR).

It was reassuring to hear that your agency is dedicated to taking a 'holistic approach' on your rulemaking process. We also welcome your commitment to improving public relations between the OSMRE and the coalfield communities, and we applaud your insistence on hearing from coalfield residents personally. As was mentioned before your arrival, many residents have had negative experiences with state OSMRE staff, and so we hope that your leadership will help to alleviate the issues with favoritism for the coal industry among local staff and the distrust of the OSMRE felt by many residents.

Finally, per our conversation regarding the stakeholder outreach process OSMRE will be conducting when the proposed rule is made public, we do hope that the process provides enough time and access for residents to be exposed to and educated about the rule in order to provide a sufficient response. The experience of the residents is just as important in the rule-making process as the technical details are, and should be given equal weight in revising the proposed rule should it be required.

We thank you for your willingness to talk with us at length during our meeting, and to answer our questions in great detail. It was reassuring to hear you respond so openly about our concerns, and to speak in great detail about the process OSMRE is following in order to ensure that the loopholes in the regulation and oversight of surface mining activities are addressed, and that our streams are sufficiently protected from further degradation.

We look forward to the proposed rule, and to meeting with you again in the future.

With best wishes,

Teri Blanton, The Alliance for Appalachia, 118 Baugh St Berea, KY 40403  
Micky McCoy, Kentuckians for the Commonwealth, 118 Baugh St Berea, KY 40403  
Vickie Terry, Statewide Organizing for Community Empowerment, P.O. Box 479  
Lake City, TN 37769  
Rory McIlmoil, Downstream Strategies, 219 Wall Street, Morgantown, WV 26505  
Amanda Starbuck, Rainforest Action Network, 221 Pine Street, San Francisco, CA 94110

## Pizarchik, Joseph G

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**From:** Pizarchik, Joseph G  
**Sent:** Tuesday, July 13, 2010 10:46 AM  
**To:** 'Kathy Selvage'  
**Cc:** Craynon, John  
**Subject:** RE: OSM-Stream Buffer Zone -- EIS -- Open House Request for SW Virginia  
**Attachments:** Federal Register June 18 Announcement.pdf

Dear Ms. Selvage:

Thank you for your interest in the open houses the Office of Surface Mining Reclamation and Enforcement (OSMRE) has scheduled to take comments on the scope of the Environmental Impact Statement (EIS) for the new Stream Protection Rule. I appreciate the concerns you raised in your July 12, 2010 email and the attached letter.

I am aware of the commitment and concerns of people in southwest Virginia with respect to protecting the environment where coal mining is conducted. I also understand why they want to have an open house in Wise County, Virginia. However, it is not possible for OSMRE to hold open houses in every community where mining occurs.

That is why open house locations were chosen with one key attribute in mind; that each open house site should be in centralized locations that most people could drive to in a reasonable amount of time. Coal mining occurs over a large geographic area and the driving distance around the nine open house locations covers more than 95 percent of the coal producing regions in the United States. Most of the open house locations are within a two-hour drive of coal mining, which is considered a reasonable driving distance. However, it is recognized that driving two hours in each direction is not reasonable for everyone. Consequently, arrangements have been made to enable people to provide their comments on the scope of the EIS by other methods; regular mail, email, and messenger service.

You also mentioned a daytime open house would be difficult to attend for those who work during the day. That difficulty was also recognized by OSMRE and is why the July 26<sup>th</sup> open house will extend through the evening until 9:00 p.m. While we certainly want input from the people of southwest Virginia, unfortunately we cannot schedule an open house in Wise County.

In your letter, you made several references to "holding a discussion" during the open houses. What is planned is neither a debate nor a public forum. The open houses are for information gathering in which attendees will receive fact sheets and look at posters on the scope of the alternatives OSMRE is considering for the EIS. There will not be a podium or an audience area. After receiving the information, attendees will have the opportunity to provide comment on the scope of the EIS for the record in front of a court reporter, or provide written comments on the scope of the EIS. If members of the Southern Appalachian Mountain Stewards, or any other interested person, do not want to attend an open house, there are other ways they can provide comments on the scope of the EIS. These other methods are discussed in more detail below.

OSMRE has published in the June 18th edition of the Federal Register a complete list of the alternatives under consideration and that information is also available on OSMRE's website. It is the same information that will be presented at the open houses. It is not necessary for a person to attend an open house in order to have their comments on the scope of the EIS considered by OSMRE. OSMRE has made arrangements to accept written comments via email, by regular mail, and by messenger service at its office here in Washington, D.C. For your convenience I have attached a copy of the Federal Register notice that contains the relevant information as well as the addresses where interested persons can send their written comments on the scope of the EIS. OSMRE will accept and carefully consider all comments on the scope

of the Environmental Impact Statement. No one will be left out. Comments must be received by OSMRE by July 30, 2010.

Everyone has the opportunity to choose the method that they determine provides them the best opportunity to provide OSMRE their comments on the scope of the EIS. All comments will be considered regardless if delivered in writing or verbally at an open house. Thank you for your interest and that of the Southern Appalachian Mountain Stewards. I would appreciate it if you would be so kind as to share the information in this email and in the attachment with the members of your organization and other interested persons. OSMRE is interested in hearing everyone's comments on the scope of the EIS. Thank you.

Please call or email if you have any additional questions.

Sincerely,

Joseph Pizarchik  
Director  
Office of Surface Mining Reclamation and Enforcement

---

**From:** Kathy Selvage [mailto:kselvage@gmail.com]  
**Sent:** Monday, July 12, 2010 2:40 PM  
**To:** Pizarchik, Joseph G; Craynon, John  
**Subject:** OSM-Stream Buffer Zone -- EIS -- Open House Request for SW Virginia

Dear Sirs:

Please find pasted here and attached a request for a open house meeting to be set for southwest Virginia regarding the EIS as related to the Stream Buffer Zone.

We await your reply. Please let us know when you receive our request and in addition, let us know your response to our request as soon as practical.

Sincerely,

Kathy Selvage  
Southern Appalachian Mountain Stewards

July 08, 2010

Mr. Joseph Pizarchik, Director  
Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue NW  
Washington, DC 20240  
[jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov)

RE: OSMRE Open House Meetings related to Stream Buffer Zone – EIS

Dear Mr. Pizarchik:

In the June federal register and supported by a recent news release from OSM, the citizens of southwest Virginia were informed that the OSMRE intended to hold several open house meetings concerning the above referenced subject matter.

We were enthusiastic about the meetings; however, upon closer observation, we discovered that a meeting would not be held in the coalfields of southwest Virginia but that the closest one we could participate in was scheduled for Hazard, KY at 3:00 PM on July 26th. This represents a hardship in travel time to our citizens of approximately 1.5 hours each way and will require even more time away from their work to attend a daytime meeting.

Many of our members live in Wise County, VA and within the last few years, Wise County has held the distinction of being second only to Pike County, KY in terms of the intensity of strip mining proportionate to our total land mass. We live daily with the detrimental effects of this extraction process and appreciate the opportunity to have a discussion of the effects upon our water.

Further, we would appreciate the attention and respect displayed in a scheduled meeting in the coalfields of southwest Virginia. Historically, we have had little opportunity in southwest Virginia to have a public discussion about the effects this type of mining has upon the land, the water, and the people who call these ancient

P.O. Box 352

Big Stone Gap, VA 24219

(276) 523 4380

mountains home. Would you please schedule an open house in Wise County in the southwestern coalfields of Virginia?

If this correspondence should have been sent elsewhere, please forward it on, and advise us of such.

I look forward to hearing your response.

Sincerely,

Kathy Selvage

Southern Appalachian Mountain Stewards

PH: 276 219 2721

cc: John Craynon, Chief, Division of Regulatory Support

Office of Surface Mining Reclamation and Enforcement

1951 Constitution Ave., NW., MS 202–SIB

Washington, DC 20240

[jcraynon@osmre.gov](mailto:jcraynon@osmre.gov)

P.O. Box 352

Big Stone Gap, VA 24219

(276) 523 4380

“Climb the mountains and get their good tidings. Nature's peace will flow into you as sunshine flows into trees. The winds will blow their own freshness into you, and the storms their energy, while cares will drop off like autumn leaves.” John Muir

2010

Kathy Selvage

Wise, VA 24293

PH: 276 328 1223

CPH: 276 219 2721

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**The Boeing Company:** Docket No. FAA-2007-27042; Directorate Identifier 2006-NM-225-AD.

**Comments Due Date**

(a) We must receive comments by July 13, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the applicable The Boeing Company airplanes; certificated in any category; as identified in the service information specified in Table 1 of this AD.

**TABLE 1—SERVICE INFORMATION**

For Model—	Boeing service information—
777-200, -300, and -300ER airplanes.	Service Bulletin 777-57A0050, Revision 2, dated May 14, 2009.
777-200 and -300 airplanes .....	Alert Service Bulletin 777-57A0051, dated May 15, 2006.
777-200, -300, and -300ER airplanes.	Alert Service Bulletin 777-57A0057, Revision 1, dated August 2, 2007.
777-200, -300, and -300ER airplanes.	Boeing Alert Service Bulletin 777-57A0059, dated October 30, 2008.

**Note 1:** Although Boeing Alert Service Bulletin 777-57A0050, Revision 2, refers to “Model 777-200ER” airplanes, this is a European designation that does not apply to airplanes of U.S. registry. Therefore, the applicability of this AD will not specify Model 777-200ER airplanes. However, U.S. operators should consider any reference to Model 777-200ER airplanes in Boeing Alert Service Bulletin 777-57A0050, Revision 2, as applicable to Model 777-200 airplanes as designated by the type certificate data sheet.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Unsafe Condition**

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the main and center fuel tanks, which could result in a fire or explosion.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Corrective Actions (Installing Teflon Sleeving, Cap Sealing, One-Time Inspection)**

(g) Within 60 months after the effective date of this AD, do the applicable actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777-57A0050, Revision 2, dated May 14, 2009: Install Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure and cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-57A0050, Revision 2, dated May 14, 2009.

(2) For airplanes identified in Boeing Alert Service Bulletin 777-57A0051, dated May 15, 2006: Cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-57A0051, dated May 15, 2006.

(3) For airplanes identified in Boeing Alert Service Bulletin 777-57A0057, Revision 1, dated August 2, 2007: Do a general visual inspection to determine if certain fasteners are cap sealed and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-57A0057, Revision 1, dated August 2, 2007. Do all applicable corrective actions before further flight.

(4) For airplanes identified in Boeing Alert Service Bulletin 777-57A0059, dated October 30, 2008: Cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-57A0059, dated October 30, 2008.

**Credit for Actions Done Using Previous Issues of the Service Bulletins**

(h) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-57A0050, dated January 26, 2006; or Revision 1, dated August 2, 2007; are acceptable for compliance with the corresponding actions required by paragraph (g)(1) of this AD, provided that the applicable additional work specified in Boeing Service Bulletin 777-57A0050, Revision 2, dated May 14, 2009, is done within the compliance time specified in paragraph (g) of this AD. The additional work must be done in accordance with Boeing Service Bulletin 777-57A0050, Revision 2, dated May 14, 2009.

(i) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-57A0057, dated August 7, 2006, are acceptable for compliance with the actions required by paragraph (g)(3) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton,

Washington 98057-3356; telephone (425) 917-6500; fax (425) 917-6590. Or, e-mail information to 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Issued in Renton, Washington, on June 10, 2010.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010-14792 Filed 6-17-10; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Chapter VII**

**RIN 1029-AC63**

**Stream Protection Rule; Environmental Impact Statement**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; notice of intent to prepare an environmental impact statement.

**SUMMARY:** On April 30, 2010,<sup>1</sup> we, the Office of Surface Mining Reclamation and Enforcement (OSM), published a Notice of Intent to prepare an environmental impact statement. This new Notice of Intent supersedes the April Notice of Intent, expands the scoping opportunities to include open houses, and outlines possible alternatives to the proposed action. OSM intends to prepare an environmental impact statement (EIS) under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) to analyze the effects of potential rule revisions under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to improve protection of streams from the adverse impacts of surface coal mining operations. We are requesting comments for the purpose of determining the scope of the EIS.

**DATES:** To ensure consideration, we must receive your electronic or written comments by July 30, 2010.

**ADDRESSES:** You may submit comments by any of the following methods, although we request that you use electronic mail if possible:

- *Electronic mail:* Send your comments to [sra-eis@osmre.gov](mailto:sra-eis@osmre.gov).
- *Mail, hand-delivery, or courier:*

Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

- *Open Houses:* Written and oral comments will be accepted at the Open House sessions, which are discussed in Section V of this Notice.

**FOR FURTHER INFORMATION CONTACT:** John Craynon, Chief, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., MS 202-SIB, Washington, DC 20240; Telephone 202-208-2866.

**SUPPLEMENTARY INFORMATION:**

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- I. Why are we publishing a new Notice of Intent?
- II. Why are we planning to revise our rules?
- III. What is the proposed Federal action?
- IV. What are the possible alternatives?
- V. How do I submit comments?
- VI. How do I request to participate as a cooperating agency?

**I. Why are we publishing a new Notice of Intent?**

On April 30, 2010, we published a Notice of Intent to prepare an environmental impact statement for a proposed Stream Protection Rule. We

have decided to expand the scoping opportunities to include several open houses in various coal producing areas of the U.S. We have also included possible alternatives under consideration for each element of the proposed action. Finally, we have extended the scoping period to July 30, 2010.

**II. Why are we planning to revise our rules?**

On December 12, 2008 (73 FR 75814-75885), we published a final rule modifying the circumstances under which mining activities may be conducted in or near perennial or intermittent streams. That rule, which this notice refers to as the 2008 rule, took effect January 12, 2009. A total of nine organizations challenged the validity of the rule in two complaints filed on December 22, 2008, and January 16, 2009 (amended complaint filed February 17, 2009): *Coal River Mountain Watch, et al. v. Salazar*, No. 08-2212 (D.D.C.) (“*Coal River*”) and *National Parks Conservation Ass’n v. Salazar*, No. 09-115 (D.D.C.) (“*NPCA*”). Under the terms of a settlement agreement signed by the parties on March 19, 2010, we agreed to use best efforts to sign a proposed rule by February 28, 2011, and a final rule by June 29, 2012. We also agreed to consult with the Fish and Wildlife Service pursuant to the Endangered Species Act, as appropriate, prior to signing the final action. On April 2, 2010, the court granted the parties’ motion to hold the judicial proceedings in abeyance.

However, we had already decided to change the rule following the change of Administrations on January 20, 2009. On June 11, 2009, the Secretary of the Department of the Interior, the Administrator of the U.S. Environmental Protection Agency (EPA), and the Acting Assistant Secretary of the Army (Civil Works) entered into a memorandum of understanding<sup>2</sup> (MOU) implementing an interagency action plan designed to significantly reduce the harmful environmental consequences of surface coal mining operations in six Appalachian states, while ensuring that future mining remains consistent with Federal law. Among other things, under the MOU we committed to consider revisions to key provisions of our rules, including the 2008 rule and approximate original contour requirements, to better protect the environment and public health from the

<sup>2</sup> The MOU can be viewed online at <http://www.osmre.gov/resources/ref/mou/ASCM061109.pdf>.

impacts of Appalachian surface coal mining.

Consequently, on November 30, 2009, we published an advance notice of proposed rulemaking (ANPR) soliciting comments on ten potential rulemaking alternatives. See 74 FR 62664-62668. In addition, consistent with the MOU, we invited the public to identify other rules that we should revise. We also announced our intent to prepare a supplement to the EIS developed in connection with the 2008 rule.

We received approximately 32,750 comments during the 30-day comment period that closed December 30, 2009. After evaluating the comments, we determined that development of a comprehensive stream protection rule (one that is much broader in scope than the 2008 rule) would be the most appropriate and effective method of achieving the goals set forth in the MOU and the ANPR. We believe that this holistic approach will better protect streams and related environmental values. It would not be fair, appropriate, scientifically valid or consistent with the principles of SMCRA to apply the new protections only in central Appalachia, as some commenters on the ANPR advocated. Streams are ecologically significant regardless of the region in which they are located. The broader scope of the stream protection rule means that we will need to prepare a new environmental impact statement rather than the supplement to the 2008 EIS that we originally intended to prepare.

**III. What is the proposed Federal action?**

The proposed Federal action consists of revisions to various provisions of our rules to improve protection of streams from the impacts of surface coal mining operations nationwide. Principal elements of the proposed action include—

- *Collection of Baseline Data.* Adding more extensive and more specific permit application requirements concerning baseline data on hydrology, geology, and aquatic biology; the determination of the probable hydrologic consequences of mining; and the hydrologic reclamation plan; as well as more specific requirements for the cumulative hydrologic impact assessment.

- *Definition of Material Damage to Hydrologic Balance.* Defining the term “material damage to the hydrologic balance outside the permit area.” This term is critically important because, under section 510(b)(3) of SMCRA, the regulatory authority may not approve a permit application unless the proposed

<sup>1</sup> 75 FR 22723 (April 30, 2010).

operation has been designed to prevent material damage to the hydrologic balance outside the permit area. This term includes streams downstream of the mining operation and above underground mines.

- *Mining Activities In or Near Streams.* Revising the regulations governing mining activities in or near streams, including mining through streams.

- *Additional Monitoring Requirements.* Adding more extensive and more specific monitoring requirements for surface water, groundwater, and aquatic biota during mining and reclamation.

- *Corrective Action Thresholds.* Establishing corrective action thresholds.

- *Land Forming and Fill Optimization.* Revising the backfilling and grading rules, excess spoil rules, and approximate original contour restoration requirements to incorporate landform restoration principles and reduce discharges of total dissolved solids.

- *Approximate Original Contour Exceptions.* Limiting variances and exceptions from approximate original contour restoration requirements.

- *Reforestation.* Requiring reforestation of previously wooded areas.

- *Permit Coordination.* Requiring that the regulatory authority coordinate the SMCRA permitting process with Clean Water Act permitting activities to the extent practicable.

- *Financial Assurances for Long-Term Discharges of Pollutants.* Codifying the financial assurance provisions of OSM's March 31, 1997, policy statement<sup>3</sup> on correcting, preventing, and controlling acid/toxic mine drainage and clarifying that those provisions apply to all long-term discharges of pollutants, not just pollutants for which effluent limitations exist.

- *Stream Definitions.* Updating the definitions of perennial, intermittent, and ephemeral streams.

#### IV. What are the possible alternatives?

We are in the process of developing alternatives for the proposed Federal action. Comments received in response to this notice will assist us in that process.

We will prepare a draft EIS after we complete the initial stages of scoping and identify which rulemaking alternatives will be analyzed in detail.

<sup>3</sup> See the document entitled "Acid Mine Drainage Policy" at [http://www.osmre.gov/guidance/significant\\_guidance.shtm](http://www.osmre.gov/guidance/significant_guidance.shtm).

Following release of the draft EIS, we anticipate publishing a notice of proposed rulemaking.

Listed below are some of the possible alternatives, in addition to the No Action Alternative, that we are considering for each element of the proposed action:

- *Additional Requirements for Collection of Baseline Data.* Add requirements that permit applicants provide more specific and comprehensive baseline data addressing factors such as: (1) Duration of sampling needed to demonstrate seasonal variations in hydrology, e.g., 12 months, 24 months, or other duration; (2) Frequency of sampling for various types of baseline data, e.g., monthly, quarterly, annually; (3) Location of sampling, e.g., downstream, upstream, off-permit; (4) Aquatic biological communities subject to sampling; and (5) Chemical, physical, and hydrologic parameters to be sampled.

- *Definition of Material Damage to Hydrologic Balance.* Alternatives for defining the term "material damage" include: (1) Any impairment of a physical, chemical, or biological function of the hydrologic balance; (2) Any quantifiable adverse impact on the quality or quantity of surface or groundwater or the biological condition of a stream that would preclude or diminish use of the water or stream; (3) Any ongoing violation of water quality standards; and (4) Differentiating between short term vs. long term impairment.

- *Mining Activities In or Near Streams.* Alternatives for regulating mining activities in, through, or near streams include: (1) Prohibiting disturbance of streams with a biological community unless the permit applicant demonstrates the ability to restore stream form and function; (2) Prohibiting activities and disturbances in all streams with a biological community, irrespective of the ability of the permit applicant to restore form and function; (3) Prohibiting activities in or near streams; (4) Reinstating the 1983 stream buffer zone rule; and (5) Addressing whether fills should be included or excluded in these restrictions.

- *Additional Monitoring Requirements.* Permittees would be required to provide additional monitoring data based on the following considerations: (1) Duration of monitoring, e.g., through final bond release; (2) Frequency of sampling, e.g., continuous, weekly, monthly, quarterly, annually; (3) Location of sampling, e.g., downstream, upstream, off-permit; (4) Biological components subject to

sampling; (5) Sampling parameters, e.g., chemical, physical, hydrologic; and (6) Regular review of monitoring data by regulatory authority, e.g., annually, at mid-term review, at permit renewal.

- *Corrective Action Thresholds.* Alternatives for determining the circumstances under which the permittee must take corrective action to prevent material damage to the hydrologic balance include: (1) Developing numerical water quality thresholds based on biological criteria; (2) Developing action thresholds based on water quality trend analysis; and (3) Defining key parameters for which thresholds will be established.

- *Landforming and Fill Optimization.* Alternatives for evaluating land configuration and handling of excess spoils include: (1) Restoring landforms including slope, aspect, and elevation on both backfilled areas and excess spoil fills; (2) Allowing postmining elevations to exceed premining elevations when necessary to restore premining topographic features; (3) Revising requirements to minimize creation of excess spoil by maximizing the amount of spoil returned to the mined-out area; (4) Revising requirements to minimize excess spoil footprints; and (5) Banning excess fill placement in streams.

- *Approximate Original Contour Exceptions.* Alternatives under consideration include: (1) Modifying requirements to ensure that exceptions from approximate original contour restoration requirements do not result in additional damage to streams with a biological community; (2) Prohibiting "mountain top" mining (would require a statutory change); and (3) Adding requirements to ensure approved postmining land uses are achievable and feasible.

- *Reforestation.* Alternatives under consideration include: (1) Requiring reforestation of mined lands to premining diversity and stocking or some percentage of premining diversity and stocking; (2) Requiring reforestation of all mined lands capable of supporting forested land uses; (3) Requiring reforestation of mined lands to the extent compatible with postmining land use; (4) Requiring reforestation and revegetation of mined lands with native species; and (5) Minimizing forest fragmentation.

- *Permit Coordination.* A provision under consideration includes: (1) Enhancing coordination of SMCRA and Clean Water Act regulatory programs consistent with the 2009 Memorandum of Understanding among DOI, Army Corps of Engineers, and EPA; and (2) Standardizing data collection and

management to enhance sharing among regulatory agencies and the public.

- *Long-Term Discharges of Pollutants.*

A provision under consideration includes: (1) Incorporating our March 31, 1997 policy statement (see footnote 3 above) into SMCRA regulations and clarifying that those provisions apply to all long-term discharges of pollutants.

- *Stream Definitions.* Alternatives under consideration include: (1) Updating the current definitions of perennial, intermittent, and ephemeral streams to include biological criteria; (2) Retaining the current definitions with the 1-square mile criterion for intermittent streams removed; (3) Adopting the stream definitions used by the Corps of Engineers—"waters of the United States"—in place of stream definitions; and (4) Using a flow-based (hydraulic) definition with no reference to biological condition.

#### V. How do I submit comments?

Consistent with 43 CFR 46.235, we invite all interested persons, organizations, and agencies to provide comments, suggestions, and any other information relevant to the scope of the EIS, the scope of the proposed Federal action, potential alternatives for the proposed Federal action, and studies and impacts that the EIS should address. See ADDRESSES for the methods by which we will accept comments.

We also anticipate conducting several open houses in various locations in coal producing regions of the U.S. in July 2010. The following locations are under consideration: Morgantown, WV; Beckley, WV; Hazard, KY; Birmingham, AL; Evansville, IN; Carbondale, IL; Fairfield, TX; Farmington, NM; and Gillette, WY. The open houses will provide an opportunity for the public to review information and provide oral and written comments regarding the scope of the issues to be addressed and identification of the significant issues related to the proposed action and possible alternatives. Information regarding the specific dates and locations will be posted on OSM's Web site, <http://www.osmre.gov>, and in local news media.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments that we receive after the close of the comment period (see

DATES) or sent to an address other than those listed in ADDRESSES may not be considered.

If you previously submitted comments in response to the ANPR or the April 30, 2010 Notice of Intent, you do not need to resubmit them. We will consider all ANPR and April 30th comments as part of this EIS scoping process.

#### VI. How do I request to participate as a cooperating agency?

Consistent with 43 CFR 46.225, we, the lead agency, invite eligible Federal, state, tribal, and local governmental entities to indicate whether they have an interest in being a cooperating agency in the preparation of the EIS. Qualified entities are those with jurisdiction by law, as defined in 40 CFR 1508.15, or special expertise, as defined in 40 CFR 1508.26. Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and make the necessary resources available in a timely manner, as discussed in the document entitled "Factors for Determining Cooperating Agency Status,"<sup>4</sup> which is Attachment 1 to the Council on Environmental Quality's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. We will not be able to provide financial assistance to cooperating agencies. If you previously indicated that you were interested in being a cooperating agency, no further action is required.

If you have an interest in participating as a cooperating agency, please contact the person listed in FOR FURTHER INFORMATION CONTACT and identify those aspects of the EIS process in which you are interested in participating. The regulations at 43 CFR 46.230 and Items 4 through 6 in the document discussed in the preceding paragraph list the activities in which cooperating agencies may wish to participate.

Dated: June 10, 2010.

#### Sterling Rideout,

Assistant Director, Program Support.

[FR Doc. 2010-14727 Filed 6-17-10; 8:45 am]

BILLING CODE 4310-05-P

<sup>4</sup> See <http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencyfactors.html>.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0871; FRL-9164-6]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by Maryland for Transportation Conformity Regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by July 19, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0871 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2008-0871, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2008-0871. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at

## **Pizarchik, Joseph G**

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**From:** Kathy Selvage [kselvage@gmail.com]  
**Sent:** Monday, July 12, 2010 2:40 PM  
**To:** Pizarchik, Joseph G; Craynon, John  
**Subject:** OSM-Stream Buffer Zone -- EIS -- Open House Request for SW Virginia  
**Attachments:** OSMRE - SBZ - EIS Request for Wise County Open House Meeting Final Draft KS 7 2010.doc

Dear Sirs:

Please find pasted here and attached a request for a open house meeting to be set for southwest Virginia regarding the EIS as related to the Stream Buffer Zone.

We await your reply. Please let us know when you receive our request and in addition, let us know your response to our request as soon as practical.

Sincerely,

Kathy Selvage  
Southern Appalachian Mountain Stewards

July 08, 2010

Mr. Joseph Pizarchik, Director  
Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue NW  
Washington, DC 20240  
[jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov)

RE: OSMRE Open House Meetings related to Stream Buffer Zone – EIS

Dear Mr. Pizarchik:

In the June federal register and supported by a recent news release from OSM, the citizens of southwest Virginia were informed that the OSMRE intended to hold several open house meetings concerning the above referenced subject matter.

We were enthusiastic about the meetings; however, upon closer observation, we discovered that a meeting would not be held in the coalfields of southwest Virginia but that the closest one we could participate in was scheduled for Hazard, KY at 3:00 PM on July 26th. This represents a hardship in travel time to our citizens of approximately 1.5 hours each way and will require even more time away from their work to attend a daytime meeting.

Many of our members live in Wise County, VA and within the last few years, Wise County has held the distinction of being second only to Pike County, KY in terms of the intensity of strip mining proportionate to our total land mass. We live daily with the detrimental effects of this extraction process and appreciate the opportunity to have a discussion of the effects upon our water.

Further, we would appreciate the attention and respect displayed in a scheduled meeting in the coalfields of southwest Virginia. Historically, we have had little opportunity in southwest Virginia to have a public discussion about the effects this type of mining has upon the land, the water, and the people who call these ancient

P.O. Box 352

Big Stone Gap, VA 24219

(276) 523 4380

mountains home. Would you please schedule an open house in Wise County in the southwestern coalfields of Virginia?

If this correspondence should have been sent elsewhere, please forward it on, and advise us of such.

I look forward to hearing your response.

Sincerely,

Kathy Selvage

Southern Appalachian Mountain Stewards

PH: 276 219 2721

cc: John Craynon, Chief, Division of Regulatory Support

Office of Surface Mining Reclamation and Enforcement

1951 Constitution Ave., NW., MS 202-SIB

Washington, DC 20240

[jcraynon@osmre.gov](mailto:jcraynon@osmre.gov)

P.O. Box 352

Big Stone Gap, VA 24219

(276) 523 4380

“Climb the mountains and get their good tidings. Nature's peace will flow into you as sunshine flows into trees. The winds will blow their own freshness into you, and the storms their energy, while cares will drop off like autumn leaves.” John Muir

2010

Kathy Selvage

Wise, VA 24293

PH: 276 328 1223

CPH: 276 219 2721



July 08, 2010

Mr. Joseph Pizarchik, Director

Office of Surface Mining Reclamation and Enforcement

1951 Constitution Avenue NW

Washington, DC 20240

[jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov)

RE: OSMRE Open House Meetings related to Stream Buffer Zone – EIS

Dear Mr. Pizarchik:

In the June federal register and supported by a recent news release from OSM, the citizens of southwest Virginia were informed that the OSMRE intended to hold several open house meetings concerning the above referenced subject matter.

We were enthusiastic about the meetings; however, upon closer observation, we discovered that a meeting would not be held in the coalfields of southwest Virginia but that the closest one we could participate in was scheduled for Hazard, KY at 3:00 PM on July 26th. This represents a hardship in travel time to our citizens of approximately 1.5 hours each way and will require even more time away from their work to attend a daytime meeting.

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Further, we would appreciate the attention and respect displayed in a scheduled meeting in the coalfields of southwest Virginia. Historically, we have had little opportunity in southwest Virginia to have a public discussion about the effects this type of mining has upon the land,

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(276) 523 4380

the water, and the people who call these ancient mountains home. Would you please schedule an open house in Wise County in the southwestern coalfields of Virginia?

If this correspondence should have been sent elsewhere, please forward it on, and advise us of such.

I look forward to hearing your response.

Sincerely,

Kathy Selvage

Southern Appalachian Mountain Stewards

PH: 276 219 2721

cc: John Craynon, Chief, Division of Regulatory Support

Office of Surface Mining Reclamation and Enforcement

1951 Constitution Ave., NW., MS 202-SIB

Washington, DC 20240

[jcraynon@osmre.gov](mailto:jcraynon@osmre.gov)

## Ishee, Mary Katherine

---

**From:** Kilduff, Daniel  
**Sent:** Tuesday, January 18, 2011 11:44 AM  
**To:** Pizarchik, Joseph G  
**Cc:** Shawley, Dianne M; Ishee, Mary Katherine; Owens, Glenda H.; Jacobson, Rachel; Caminiti, Mariagrazia; Bovard, Tom; McIlwain, Patruzzelli D.  
**Subject:** RE: rescheduling of meeting with Director Pizarchik

Joe, can you suggest some new dates for this meeting? The dates your previously indicated (see below) did not work out. Thanks. Dan

---

Daniel W. Kilduff  
U.S. Department of the Interior  
Office of the Solicitor  
Division of Mineral Resources  
(202) 208-4083  
(202) 219-1789 (fax)  
[daniel.kilduff@sol.doi.gov](mailto:daniel.kilduff@sol.doi.gov)

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---

**From:** Pizarchik, Joseph G  
**Sent:** Tuesday, January 11, 2011 4:15 PM  
**To:** Kilduff, Daniel  
**Cc:** Shawley, Dianne M; Ishee, Mary Katherine; Owens, Glenda H.; Jacobson, Rachel; Caminiti, Mariagrazia; Hawbecker, Karen; Bovard, Tom; McIlwain, Patruzzelli D.  
**Subject:** RE: rescheduling of meeting with Director Pizarchik

Dan:

Here are 3 dates and 4 times:  
Jan. 13 – Afternoon  
Jan18 – 8 to 10am or afternoon  
Jan 19 - afternoon

---

**From:** Kilduff, Daniel  
**Sent:** Tuesday, January 11, 2011 3:35 PM  
**To:** Pizarchik, Joseph G  
**Cc:** Shawley, Dianne M; Ishee, Mary Katherine; Owens, Glenda H.; Jacobson, Rachel; Caminiti, Mariagrazia; Hawbecker, Karen; Bovard, Tom  
**Subject:** FW: rescheduling of meeting with Director Pizarchik  
**Importance:** High

Joe, can you suggest some dates for this meeting with the SBZ Rule litigation plaintiffs? Thanks. Dan

---

Daniel W. Kilduff

U.S. Department of the Interior  
Office of the Solicitor  
Division of Mineral Resources  
(202) 208-4083  
(202) 219-1789 (fax)  
[daniel.kilduff@sol.doi.gov](mailto:daniel.kilduff@sol.doi.gov)

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---

**From:** Storey, Ruth Ann (ENRD) [<mailto:Ruth.Ann.Storey@usdoj.gov>]  
**Sent:** Tuesday, January 11, 2011 10:54 AM  
**To:** Kilduff, Daniel  
**Subject:** FW: rescheduling of meeting with Director Pizarchik

Dan – Can you get us some suggested dates for the meeting with the Director? Thanks RA

---

**From:** Deborah Murray [<mailto:dmurray@selcva.org>]  
**Sent:** Monday, January 10, 2011 12:02 PM  
**To:** Lynk, Brian (ENRD); Storey, Ruth Ann (ENRD)  
**Cc:** Libby Fayad  
**Subject:** rescheduling of meeting with Director Pizarchik

Dear Brian and Ruth Ann,  
Any word as to when Mr. Pizarchik is able to meet? We are very concerned by the (unavoidable) delay given that the deadline for the draft EIS is still set for the end of February. Thanks. Regards, Deborah

Deborah M. Murray  
Senior Attorney  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, Virginia 22902  
434.977.4090  
434.977.1483 (FAX)  
[dmurray@selcva.org](mailto:dmurray@selcva.org)  
[www.SouthernEnvironment.org](http://www.SouthernEnvironment.org)

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***Documents responsive to the April 1, 2011, request from Chairman Hastings for documents related to the Office of Surface Mining, Stream Buffer Zone Rule***

**Volume: 00027094\_Hastings\_002**

	<b>Document Name</b>	<b>Pages</b>	<b>Document Date</b>	<b>Document Type</b>	<b>Document Title</b>	<b>Request 3</b>	<b>Request 4</b>
1	OSM-WDC-B04-00001-000001	6	20100830	MOU	MOU between the West Virginia Division of Natural Resources for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	OSM-WDC-B04-00001-000002	8	20100823	MOU	MOU between OSM and Commonwealth of Virginia Department of Historic Resources for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	OSM-WDC-B04-00001-000003	10	20100830	MOU	MOU between OSM and the Utah Division of Oil, Gas and Mining for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	OSM-WDC-B04-00001-000004	8	20100825	MOU	MOU between OSM and Commonwealth of Virginia Department of Mines, Minerals and Energy for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	OSM-WDC-B04-00001-000005	9	20100816	MOU	MOU between OSM and the Indiana Department of Natural Resources for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	OSM-WDC-B04-00001-000006	7	20100824	MOU	MOU between OSM and State of Alabama Surface Mining Commission for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7	OSM-WDC-B04-00001-000007	8	20100826	MOU	MOU between OSM and the West Virginia Department of Environmental Protection for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8	OSM-WDC-B04-00001-000008	10	20100825	MOU	MOU between OSM and Wyoming Department of Environmental Quality for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9	OSM-WDC-B04-00001-000009	11	20100825	MOU	MOU between OSM and Railroad Commission of Texas, Surface Mining and Reclamation Division for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Document Name	Pages	Document Date	Document Type	Document Title	Request 3	Request 4
10	OSM-WDC-B04-00001-000010	8	20100824	MOU	MOU between OSM and Commonwealth of Kentucky, Energy and Environment Cabinet Department for Natural Resources for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11	OSM-WDC-B04-00001-000011	8	20100914	MOU	MOU between OSM and the New Mexico Energy, Minerals and Natural Resources Department for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12	OSM-WDC-B04-00001-000012	7	20100825	MOU	MOU between OSM and the U.S. Fish and Wildlife Service for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13	OSM-WDC-B04-00001-000013	8	20100816	MOU	MOU between OSM and the U.S. Environmental Protection Agency for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14	OSM-WDC-B04-00002-000001	10	20100816	MOU	MOU between OSM and the Wyoming State Historic Preservation Office for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15	OSM-WDC-B04-00002-000002	10	20100816	MOU	MOU between OSM and the Commonwealth of Virginia Department of Historic Resources for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16	OSM-WDC-B04-00002-000003	10	20100816	MOU	MOU between OSM and the Kansas Historical Society for EIS activities under NEPA for Stream Protection rulemaking	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17	OSM-WDC-B09-00001-000001	15	XXXXXXXXXX	OTH	EPA Response to Congressional Request: Reviewers of Draft OSM EIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18	OSM-WDC-B09-00001-000002	16	XXXXXXXXXX	OTH	All EPA Staff that OSM records show recieved all or part of OSMs draft EIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Total Pages: 169**

**MEMORANDUM OF UNDERSTANDING**

between

The Office of Surface Mining Reclamation and Enforcement

and

West Virginia Division of Natural Resources

for EIS activities under NEPA for Stream Protection rulemaking

August 30, 2010

**A. STATEMENT OF PURPOSE, BACKGROUND**

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the West Virginia Division of Natural Resources (WVDNR) (the Cooperator) (collectively referred to as the signatories) is to establish responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

- 1. SMCRA
- 2. NEPA and implementing regulations, cited above
- 3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the WVDNR to enter into this MOU includes, but is not limited to:

- 8/30/10 1. <Insert authority> WV Natural Resources Laws, Chapter 20, Code of WV
- 2. <Insert authority>

**B. SIGNATORIES' ROLES AND RESPONSIBILITIES**

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the Federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other Federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying Federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the WVDNR written or e-mail confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The WVDNR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to fish and wildlife and related environmental resources and other areas for which the WVDNR has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing fish and wildlife populations and habitat; relevant statutory and regulatory

requirements related to fish and wildlife and related environmental resources; impacts of alternatives on fish and wildlife and related environmental resources; and conclusions regarding alternatives with respect to fish and wildlife and related environmental resources or other areas for which WVDNR has special expertise or jurisdiction.

All WVDNR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with Federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under Federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Fish and wildlife data, habitat quality and biological assessment protocols, environmental compliance data, and cost data related to the implementation of fish and wildlife protection measures for which WVDNR has special expertise or jurisdiction.
- b. WVDNR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to fish and wildlife and related environmental resources. WVDNR's role as a cooperating agency is to provide guidance to OSM in preparing the fish and wildlife and related environmental resource analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, WVDNR will review technical documents on impacts to fish and wildlife and related environmental resources and will advise the OSM on the technical adequacy and completeness of these documents.

WVDNR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the WVDNR.

Information to be provided or reviewed by WVDNR may include, but is not limited to, the following: data and analyses regarding existing fish and wildlife populations and habitat; relevant statutory and regulatory requirements related to fish and wildlife and related environmental resources; impacts of alternatives on fish and wildlife and related environmental resources; and conclusions regarding alternatives with respect to fish and wildlife and related environmental resources or other areas for which WVDNR has special expertise or jurisdiction.

- c. Other information based on WVDNR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to WVDNR upon signature of this MOU and may be updated on a periodic basis. OSM will provide WVDNR all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the WVDNR has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### C. LIMITATIONS

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the WVDNR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents that are privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as required to be released by law pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public by law.

### D. STIPULATIONS

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The WVDNR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the WVDNR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

**E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly states each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU.

If the designated representatives from OSM and the WVDNR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the WVDNR, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

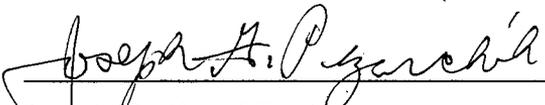
West Virginia Division of Natural Resources  
324 Fourth Avenue, Charleston, WV

  
\_\_\_\_\_

Date 9-22-10

Curtis I. Taylor, Chief  
Wildlife Resources Section

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

  
\_\_\_\_\_

Date 9-30-10

Joseph G. Pizarchik, Director

S-37-M



DCI-OSM  
OFFICE OF THE DIRECTOR

2010 AUG 31 AM 10:45

# COMMONWEALTH of VIRGINIA

## Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221

Douglas W. Domenech  
Secretary of Natural Resources

Kathleen S. Kilpatrick  
Director

Tel: (804) 367-2323  
Fax: (804) 367-2391  
TDD: (804) 367-2386  
www.dhr.virginia.gov

August 23, 2010

Joseph G. Pizarchik, Director  
United States Department of the Interior  
Office of Surface Mining, Reclamation and Enforcement  
1951 Constitution Ave, NW  
Mail Stop 202  
Washington, DC 20240

RE: Memorandum of Understanding  
Between The Office of Surface Mining, Reclamation and Enhancement and the  
Commonwealth of Virginia Department of Historic Resources  
for EIS Activities under NEPA for Stream Protection Rulemaking

Dear Mr. Pizarchik:

Thank you for offering us the opportunity to participate as a cooperating agency in the preparation of an environmental impact statement for the new stream protection rulemaking. The director of the Department of Historic Resources and Virginia's State Historic Preservation Officer has signed the agreement.

We look forward to working with you on the EIS. If you have any questions, or if we may provide any further assistance, please do not hesitate to contact me at (804) 367-2323, ext. 112; fax (804) 367-2391; e-mail [ethel.eaton@dhr.virginia.gov](mailto:ethel.eaton@dhr.virginia.gov).

Sincerely,

Ethel R. Eaton, Ph.D., Senior Policy Analyst  
Division of Resource Services and Review

Administrative Services  
10 Courthouse Ave.  
Petersburg, VA 23803  
Tel: (804) 862-6416  
Fax: (804) 862-6196

Capital Region Office  
2801 Kensington Office  
Richmond, VA 23221  
Tel: (804) 367-2323  
Fax: (804) 367-2391

Tidewater Region Office  
14415 Old Courthouse Way  
2<sup>nd</sup> Floor  
Newport News, VA 23608  
Tel: (757) 886-2807  
Fax: (757) 886-2808

Roanoke Region Office  
1030 Penmar Avenue, SE  
Roanoke, VA 24013  
Tel: (540) 857-7585  
Fax: (540) 857-7588

Northern Region  
Preservation Office  
P.O. Box 519  
Stephens City, VA 22655  
Tel: (540) 868-7029  
Fax: (540) 868-7033

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Commonwealth of Virginia Department of Historic Resources  
for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Commonwealth of Virginia Department of Historic Resources (VADHR) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531).

Authority for the VADHR to enter into this MOU includes, but is not limited to:

1. National Historic Preservation Act of 1966 (P.L. 89-665), as amended
2. Code of Virginia, Title 10.1, Chapters 22, 23, and 24

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the VADHR written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The VADHR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources and other areas for which the VADHR has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural

and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

All VADHR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on cultural and historic resources, statutory compliance data, and cost data related to the implementation of cultural and historic resources programs for which VADHR has special expertise or jurisdiction;
- b. VADHR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources. VADHR's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, VADHR will review technical documents on impacts to cultural and historic resources and will advise the OSM on the technical adequacy and completeness of these documents.

VADHR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the VADHR.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

- c. Other information based on VADHR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to VADHR upon signature of this MOU and may be updated on a

periodic basis. OSM will provide VADHR all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the VADHR has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the VADHR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The VADHR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the VADHR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document

that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the VADHR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the VADHR, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

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The signatories have executed this MOU on the dates shown below.

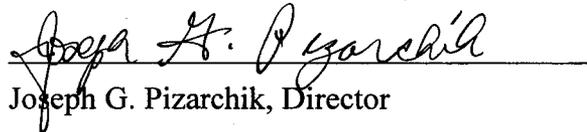
Commonwealth of Virginia Department of Mines, Minerals and Energy  
1100 Bank Street, Richmond, VA



Date 8/23/10

Kathleen S. Kilpatrick, Director

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC



Date 8-31-10

Joseph G. Pizarchik, Director

S-29-M

DOJ OSM  
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT

2010 SEP -9 AM 9:25

KANSAS

KSR&C No. 10-07-166

Kansas Historical Society  
Jennie Chinn, Executive Director

MARK PARKINSON, GOVERNOR

August 30, 2010

Joseph Pizarchik  
Director  
Office of Surface Mining  
Reclamation and Enforcement  
Washington, D.C. 20240

RE: Memorandum of Understanding (MOU)  
Coal Mining Operations and Reclamation  
Statewide

Dear Mr. Pizarchik:

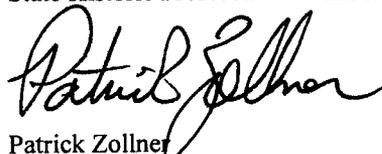
The Kansas State Historic Preservation Office has received your letter dated August 16, 2010 containing a Memorandum of Understanding (MOU) between the Office of Surface Mining and Enforcement (OSM) and the Kansas Historical Society (KHS).

We note that the MOU would obligate our office to provide timely review of materials relating to the upcoming Environmental Impact Statement (EIS) being prepared by OSM. As we read the schedule, comments would in all cases be expected from our office less than two weeks after submission. Under the law, our office is allowed 30 days for comment. While it seldom takes 30 days for a response, we cannot guarantee that the proposed deadlines could be met. We also note the obligation for our office to assist (to the extent possible) with data collection. A Florida-based consulting firm has already contacted us regarding such activities. As we told them, our agency has absorbed several rounds of budget cuts and our small staff lacks the ability to provide any meaningful assistance with research related to this project. Scarce resources aside, it is our position that background research and data collection is the responsibility of those preparing the EIS, not the SHPO staff. We did pass along information regarding online access to our GIS system, and a listing of consultants should local research assistance be necessary. At this time, given the factors outlined above, we cannot sign the proposed MOU but will review the project in accordance with 36CFR800.

If you have questions regarding these comments, please contact SHPO Archeologist Tim Weston at 785-272-8681 (ext. 214) or Review & Compliance Coordinator Kim Gant at 785-272-8681 ext. 225.

Sincerely,

Jennie Chinn  
Executive Director and  
State Historic Preservation Officer



Patrick Zollner  
Deputy State Historic Preservation Officer

6425 SW 6th Avenue • Topeka KS 66615-1099  
Phone 785-272-8681, ext. 205 • Fax 785-272-8682 • jchinn@kshs.org • TTY 785-272-8683  
kshs.org



GARY R. HERBERT  
Governor

GREGORY S. BELL  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

S-4-M

September 2, 2010

Mr. John Craynon  
Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Ave N.W. Room 210-SIB  
Washington, D.C. 20240

Dear Mr. Craynon:

Enclosed are two copies of the Division of Oil, Gas & Mining's MOU regarding the EIS activities under NEPA for Stream Protection rulemaking.

I would like to designate Dana Dean as our representative on the project, and Peter Brinton as the backup representative.

To ensure timeliness in responding to your drafts, we would ask that our primary contact be through email. Dana can be reached at 801.538.5320, or [danadean@utah.gov](mailto:danadean@utah.gov); Peter can be reached at 801.538.5258 or [peterbrinton@utah.gov](mailto:peterbrinton@utah.gov).

Thank you for the opportunity to work cooperatively on the Stream Protection rulemaking.

Sincerely,

  
John Baza  
Director

P:\GROUPS\MINES\WP\OSM\OSM Mr. Craynondoc.doc



## Invitation to Submit Underground Mine Mapping Proposals

The Office of Surface Mining (OSM) is currently seeking applications for FY'11 underground mine map projects. This program is part of OSM's Underground Mine Map Initiative. Funding for the projects will be provided from OSM's Applied Sciences Program. Successful projects will be awarded through a cooperative agreement between OSM and the appropriate state agency. Included in this letter is a copy of the FY'11 Solicitation for your review. The closing date for applications to be accepted is February 4, 2011.

From its inception, the Underground Mine Map Initiative has provided funding for mine map projects in the amount of \$1,400,000. OSM funding along with state agency matching funds has enabled tens of thousands of underground mine maps to be acquired, repaired, digitally recorded, georeferenced, and made available electronically to the general public. We look forward to receiving your application for the FY'11 underground mine map project.

Please feel free to contact Joshua Rockwell, Mining Engineer, of my staff, on (202) 208-2633 or [jrockwell@osmre.gov](mailto:jrockwell@osmre.gov), if you have any questions.

Sincerely,

John R. Craynon, Chief  
Division of Regulatory Support

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Utah Division of Oil, Gas and Mining

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Utah Division of Oil, Gas and Mining (UDOGM) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the UDOGM to enter into this MOU includes, but is not limited to:

1. <Insert authority>
2. <Insert authority>

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

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OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

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OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

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**THE COOPERATOR'S ROLE:** The UDOGM is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the UDOGM has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions

regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which UDOGM has special expertise or jurisdiction.

All UDOGM input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which UDOGM has special expertise or jurisdiction;
- b. UDOGM will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. UDOGM's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

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UDOGM's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the UDOGM.

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- c. Other information based on UDOGM's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to UDOGM upon signature of this MOU and may be updated on a

periodic basis. OSM will provide UDOGM all updated planning schedules as soon as possible to allow for participation in the process.

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Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

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This MOU does not direct or apply to any person outside OSM and the UDOGM.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

#### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The UDOGM will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the UDOGM designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

#### **E. DISPUTES**

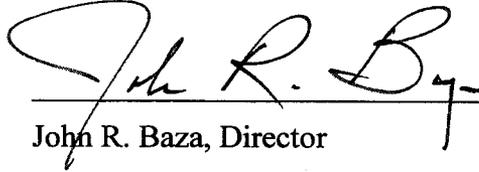
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or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the UDOGM cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the UDOGM, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

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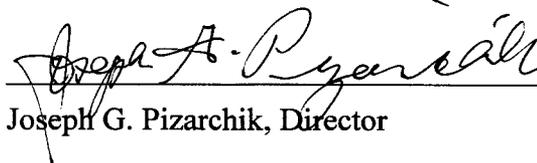
The signatories have executed this MOU on the dates shown below.

Utah Division of Oil, Gas and Mining  
P.O. Box 145801, Salt Lake City, UT

  
\_\_\_\_\_  
John R. Baza, Director

Date 9/2/2010

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

  
\_\_\_\_\_  
Joseph G. Pizarchik, Director

Date 9-17-10

S-24-M

**Mitchell, Maria M.**

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**From:** Craynon, John  
**Sent:** Wednesday, August 25, 2010 4:27 PM  
**To:** Mitchell, Maria M.  
**Subject:** FW: Stream Rule EIS cooperative agency MOU - Virginia  
**Attachments:** DMME-OSM MOU 8-25-10.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI

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**From:** Walz, Stephen [<mailto:Stephen.Walz@dmme.virginia.gov>]  
**Sent:** Wednesday, August 25, 2010 4:21 PM  
**To:** Craynon, John  
**Cc:** Pizarchik, Joseph G; Lambert, Butch; Davis, Jackie; Christopher, Evie; Garrett, Susie  
**Subject:** Stream Rule EIS cooperative agency MOU - Virginia

Mr. Craynon - Enclosed is the executed MOU between OSM and DMME for cooperating agency status on the stream protection rule EIS. We have made three amendments to the document you sent us. They include:

- Page 1 - We have added the authority under which I am authorized to sign this MOU.
- Page 2 - We have struck language that would authorize OSM to identify which documents are pertinent to our jurisdictional responsibility. As the agency with primacy in Virginia and not being an agency with limited jurisdiction such as a state historic preservation office, we believe we should receive all relevant documents. We understand your wanting to limit document transmittal to some special-purpose agencies, but do not believe this is appropriate for the primary coal surface mining regulatory agency at the state.
- Page 4 - We struck the language that established a presumption that failure to comment indicated that DMME had no comment on the material reviewed. We believe this is important due to the short time frame given for review of the material, typically 8 and 10 days on your proposed schedule. We will work diligently to meet this time schedule, but do not know the scope nor technical nature of that which we will be asked to comment on, so do not believe such a presumption is appropriate.

Thanks for including Virginia in this process. We hope that we can achieve a balanced approach in the new regulatory action that reflects the underlying intent of SMCRA to promote coal mining in a manner protective of the environment.

Butch Lambert will be our primary representative for this EIS. He can be reached at [butch.lambert@dmme.virginia.gov](mailto:butch.lambert@dmme.virginia.gov) or 276-523-8145. Jackie Davis will be our backup representative. He can be reached at [jackie.davis@dmme.virginia.gov](mailto:jackie.davis@dmme.virginia.gov) or 276-523-8286.

Please let me know if you have any questions about our amendments to the MOU. - Steve Walz

Stephen A. Walz  
Director, Department of Mines, Minerals and Energy  
1100 Bank Street, 8th Floor  
Richmond, VA 23219  
office 804-692-3211  
cell 804-432-6661  
fax 804-692-3237  
[stephen.walz@dmme.virginia.gov](mailto:stephen.walz@dmme.virginia.gov)

<<DMME-OSM MOU 8-25-10.pdf>>

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Commonwealth of Virginia Department of Mines, Minerals and Energy

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Commonwealth of Virginia Department of Mines, Minerals and Energy (VADMME) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act). 1500-1508

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the VADMME to enter into this MOU includes, but is not limited to:

1. § 45.1 of the Code of Virginia authorizing the Department of Mines, Minerals and Energy to "make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of powers under this title, including, but not limited to, contracts with the private sector, the United States, other state agencies and governmental subdivisions of the Commonwealth;"

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of ~~key or~~ relevant documents underlying the EIS ~~that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise~~, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs. SCW  
8/24/10

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the VADMME written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The VADMME is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the VADMME has special expertise or jurisdiction. Information, comments, and

analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which VADMME has special expertise or jurisdiction.

All VADMME input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which VADMME has special expertise or jurisdiction;
- b. VADMME will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. VADMME's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, VADMME will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.

VADMME's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the VADMME.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which VADMME has special expertise or jurisdiction.

- c. Other information based on VADMME's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to VADMME upon signature of this MOU and may be updated on a periodic basis. OSM will provide VADMME all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

~~The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the VADMME has no comment on the material reviewed.~~

300/2/25/10

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### C. LIMITATIONS

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the VADMME.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

### D. STIPULATIONS

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The VADMME will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the VADMME designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

**E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the VADMME cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the VADMME, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

Commonwealth of Virginia, Department of Mines, Minerals and Energy  
1100 Bank Street, 8<sup>th</sup> Floor, Richmond, VA

  
\_\_\_\_\_  
Stephen A. Walz, Director

Date 8/25/2010

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_  
Joseph G. Pizarchik, Director

Date \_\_\_\_\_



Indiana Department of Natural Resources

S-23-M

Mitchell E. Daniels, Jr., Governor  
Robert E. Carter, Jr., Director

14619 West State Road 48  
Jasonville, IN 47438  
August 24, 2010

Mr. Joseph G. Pizarchik, Director  
U.S. Department of Interior  
Office of Surface Mining Reclamation and Enforcement  
South Interior Building, Room 233  
1951 Constitution Avenue, NW  
Washington, DC 20240

Re: Response to August 16, 2010  
Letter, Cooperating Agency

Dear Director Pizarchik;

I have enclosed two copies of the signed Memorandum of Understanding (MOU) between The Office of Surface Mining Reclamation and Enforcement and our agency for EIS activities under NEPA for the Stream Protection rulemaking.

Please note two modifications were made to this document:

1. The authority citations for our agency to enter into the MOU.
2. Addition of "Division of Reclamation" within my signature block.

Paragraph 3 of Page 4 states the need for a Cooperator to designate a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. I will serve as the representative. The backup representative information is as follows:

Mr. Ron McAhron, Deputy Director  
Indiana Department of Natural Resources  
Indiana Government Center South  
Executive Office, Room W256  
Indianapolis, IN 46204

Mr. McAhron's contact information includes e-mail at [rmcahron@dnr.IN.gov](mailto:rmcahron@dnr.IN.gov) and telephone number (317) 232-1557.

I look forward to assisting with this effort and thank you for the opportunity to cooperate. Please contact me at the letterhead address, via e-mail at [bstevens@dnr.IN.gov](mailto:bstevens@dnr.IN.gov) or (812) 665-2207 should you have questions or need additional information.

Sincerely,

Bruce A. Stevens, Director  
Division of Reclamation

BAS/vp

Enc: Signed MOUs  
Cc: R. McAhron, IDNR  
J. Craynon, OSM, w/out Encl.

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Indiana Department of Natural Resources

Mitchell E. Daniels, Jr., Governor  
Robert E. Carter, Jr., Director

14619 West State Road 48  
Jasonville, IN 47438  
August 24, 2010

Mr. Joseph G. Pizarchik, Director  
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Indiana Government Center South  
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Sincerely,

Bruce A. Stevens, Director  
Division of Reclamation

BAS/vp

Enc: Signed MOUs

Cc: R. McAhron, IDNR

J. Craynon, OSM, w/out Encl.

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Indiana Department of Natural Resources

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Indiana Department of Natural Resources (IDNR) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the IDNR to enter into this MOU includes, but is not limited to:

1. Indiana Code 14-34
2. Title 312, Article 25, Indiana Administrative Code

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

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In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the IDNR written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The IDNR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the IDNR has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions

regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which IDNR has special expertise or jurisdiction.

All IDNR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which IDNR has special expertise or jurisdiction;
- b. IDNR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. IDNR's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, IDNR will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.

IDNR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the IDNR.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which IDNR has special expertise or jurisdiction.

- c. Other information based on IDNR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to IDNR upon signature of this MOU and may be updated on a

periodic basis. OSM will provide IDNR all updated planning schedules as soon as possible to allow for participation in the process.

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The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

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Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

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## **C. LIMITATIONS**

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those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the IDNR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

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#### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The IDNR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the IDNR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

#### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the IDNR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the IDNR, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon

the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

Indiana Department of Natural Resources  
Division of Reclamation  
14619 West State Road 48, Jasonville, IN

Bruce A. Stevens

Date 8-24-10

Bruce A. Stevens, Director

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

Joseph G. Pizarchik

Date 8-31-10

Joseph G. Pizarchik, Director

S-18-m



**STATE OF ALABAMA  
SURFACE MINING COMMISSION**

P.O. BOX 2390 - JASPER, ALABAMA 35502-2390  
(205) 221-4130 • FAX: (205) 221-5077

August 24, 2010

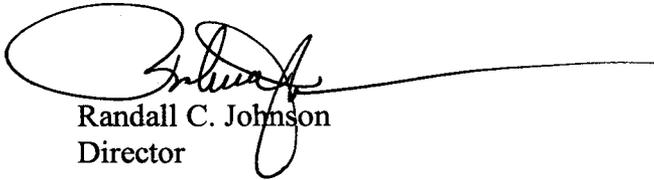
Mr. Joseph G. Pizarchik, Director.  
United States Department of Interior Office of Surface Mining  
Reclamation and Enforcement  
Office Of The Director  
1951 Constitution Ave N.W.  
Washington, D.C. 20240

Dear Mr. Pizarchik:

Enclosed is a signed copy of the Memorandum of Understanding (MOU) for the  
Environmental Impact Statement (EIS).

Should you have any questions concerning this matter, please feel free to contact me.

Sincerely,



Randall C. Johnson  
Director

/arm

DO:CONI  
OFFICE OF THE DIRECTOR

2010 AUG 31 AM 10:45

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

State of Alabama Surface Mining Commission

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the State of Alabama Surface Mining Commission (ASMC) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the ASMC to enter into this MOU includes, but is not limited to:

1. Code of Alabama 1975 § 9-16-133(2)

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the ASMCASMC written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The ASMCASMC is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the ASMCASMC has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which ASMC has special expertise or jurisdiction.

All ASMC input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which ASMC has special expertise or jurisdiction;
- b. ASMC will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. ASMC's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, ASMC will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.

ASMC's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the ASMC.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which ASMC has special expertise or jurisdiction.

- c. Other information based on ASMC's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to ASMC upon signature of this MOU and may be updated on a periodic basis. OSM will provide ASMC all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the ASMC has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

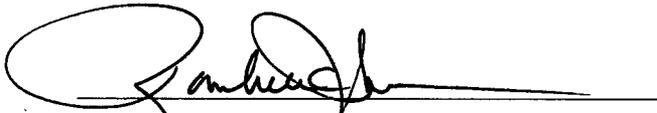
All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the ASMC.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does

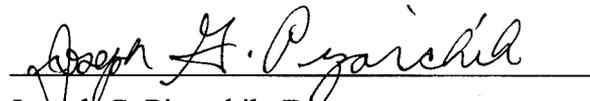
The signatories have executed this MOU on the dates shown below.

State of Alabama Surface Mining Commission  
P.O. Box 2390, Jasper, AL

  
\_\_\_\_\_  
Randall C. Johnson, Director

Date 8/24/2010

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

  
\_\_\_\_\_  
Joseph G. Pizarchik, Director

Date 8-31-10

9/2/2010

# COMPLETED

ID:

Subject:

Author:

From:

To:

Signature Date:

Due Date:

Completion Date:

Correspondence Type:

Action Office:

Comments:

Date	Action	Responsible Party
1-Sep-2010	Forwarded to mail & close out	M. Mitchell/APWalker
31-Aug-2010	Signed By	Joe Pizarchik
31-Aug-2010	Submitted for Signature	Joe Pizarchik
31-Aug-2010	Received By	Patrick Braxton
31-Aug-2010	Hand Carried to	AD/Program Support
31-Aug-2010	Received By	APWalker

S-16-m



DEP/OSM  
OFFICE OF THE DIRECTOR

2010 SEP 07 PM 3:05

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west virginia department of environmental protection

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Division of Mining and Reclamation  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
304-926-0490

Joe Manchin III, Governor  
Randy Huffman, Cabinet Secretary  
dep.wv.gov

August 26, 2010

Mr. Joseph Pizarchik  
United State Department of the Interior  
Office of Surface Mining  
Reclamation and Enforcement  
Washington, D.C. 20240

Re: Cooperating agency on MOU with OSM

Dear Mr. Pizarchik:

Attached to this letter are two signed originals of the memorandum of understanding (MOU) outlining participation of the West Virginia Department of Environmental Protection (DEP) as a cooperating agency in the preparation of the U. S. Office of Surface Mining's environmental impact statement for the new stream protection rulemaking. The DEP has reservations about several portions of this MOU but accepts the invitation to participate as a cooperating agency in part, to lend its expertise to this effort. It is noted at the outset that the proposed schedule will impose an unreasonable strain on State resources in that it adds demands to an already overtaxed State regulatory program.

You are informed of the following clarifications and qualifications relative to WVDEP participation as a cooperating agency:

- It is noted that the proposed timeline provides for the scoping report and Chapter 1 to be prepared by OSM and contractor without review or comment by cooperating agencies. The exclusion of cooperating agencies in consideration of Chapter 1 could influence comments on other sections of the EIS.
- The proposed timeline does not contain a place for preparation of an Executive Summary. Since an Executive Summary will characterize the entire EIS the schedule should provide for preparation of such a summary. Additionally, the schedule fails to allow time for compilation of appendices, a definition section and other components often included in an EIS.

Promoting a healthy environment.

S-16m

Mr. Joseph Pizarchik  
August 26, 2010  
Page Two

- The West Virginia Freedom of Information Act requirements are different from the ones contained in Federal law and consequently MOU provisions pertaining to public disclosure could become problematic. However, the WVDEP understands the OSM desire to promote a free exchange of ideas by protecting deliberative, discussion documents from public disclosure and WVDEP will contact OSM regarding requests for the release of information developed as part of this EIS effort.
- Given the subject matter of the EIS and the significance for West Virginia it may be necessary during the preparation process for WVDEP to respond to press inquires or inform the public as to the nature of the WVDEP participation in this process. Any such communications will be decided upon solely by WVDEP and best efforts will be made to inform OSM of these communications (if any).

In order to enable the WVDEP to more meaningfully participate in the process it is suggested that all documents underlying the EIS, including but not limited to data, reports, studies and survey results, be made available to WVDEP and other cooperating agencies so that such information may be considered in review of the drafts provided by OSM for review and comment.

A list of the federal and other state agencies serving as 'cooperating agencies' could be helpful in fostering communications during the brief review and comment periods, and OSM is requested to provide this list when the signed MOU is returned, which will presumably be prior to the "Meeting/telecom" during the week of 8/30/2010.

WVDEP understands its participation as a cooperating agency will neither enlarge nor diminish its statutory or legal responsibilities and rights or decision making authority under applicable laws and rules, NEPA and its regulations and guidance. The WVDEP is available to work with your agency and looks forward to hearing from you relative to the next step.

The state representatives for this MOU will be Lewis Halstead and Russ Hunter. If you have any questions, regarding this you may contact me, Russ or Lewis at (304) 926-0490.

Cordially,



Thomas L. Clarke  
Director

Promoting a healthy environment.

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

West Virginia Department of Environmental Protection

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the West Virginia Department of Environmental Protection (WVDEP) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the WVDEP to enter into this MOU includes, but is not limited to:

WV State Code § 22-3

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the WVDEP written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The WVDEP is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the WVDEP has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which WVDEP has special expertise or jurisdiction.

All WVDEP input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which WVDEP has special expertise or jurisdiction;
- b. WVDEP will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. WVDEP's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, WVDEP will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.

WVDEP's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the WVDEP.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which WVDEP has special expertise or jurisdiction.

- c. Other information based on WVDEP's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to WVDEP upon signature of this MOU and may be updated on a periodic basis. OSM will provide WVDEP all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the WVDEP has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

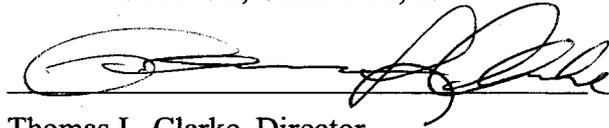
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This MOU does not direct or apply to any person outside OSM and the WVDEP.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does

The signatories have executed this MOU on the dates shown below.

West Virginia Department of Environmental Protection  
Division of Mining and Reclamation  
601 57<sup>th</sup> Street SE, Charleston, WV



Date 8/30/10

Thomas L. Clarke, Director

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC



Date 9-13-10

Joseph G. Pizarchik, Director

it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

#### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The WVDEP will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the WVDEP designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

#### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the WVDEP cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the WVDEP, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

**MEMORANDUM OF UNDERSTANDING**

between

The Office of Surface Mining Reclamation and Enforcement

and

Wyoming Department of Environmental Quality

for

EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

**A. STATEMENT OF PURPOSE, BACKGROUND**

1. The purpose of this Memorandum of Understanding (“MOU”) between the Office of Surface Mining Reclamation and Enforcement (“OSM”) and the Wyoming Department of Environmental Quality (“Cooperator”) (collectively, the OSM and the Cooperator shall be referred to as the “Signatories”) establishes responsibilities of each agency concerning preparation of OSM’s environmental impact statement (“EIS”) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (“NEPA”) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (“SMCRA”). This MOU implements NEPA, consistent with the Council on Environmental Quality (“CEQ”) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).
2. Authority for OSM to enter into this MOU includes, but is not limited to:
  - a. SMCRA
  - b. NEPA and implementing regulations, cited above
  - c. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)
3. Authority for the Cooperator to enter into this MOU includes, but is not limited to:
  - a. Wyoming Statute Annotated §§ 35-11-109(a)(ii) & (iii) (2010)

**B. SIGNATORIES’ ROLES AND RESPONSIBILITIES**

1. OSM’S ROLE:
  - a. OSM is the lead agency for the federal government’s preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

- b. OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.
- c. OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.
- d. OSM will provide the Signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.
- e. When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.
- f. OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.
- g. In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.
- h. OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.
- i. OSM will provide to the Cooperator written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.
- j. In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

## 2. COOPERATOR'S ROLE:

- a. The Cooperator is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.
- b. The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.
- c. The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the Cooperator has special expertise or jurisdiction. Information, comments, and analysis provided by the Cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which the Cooperator has special expertise or jurisdiction.
- d. All Cooperator input to the process of EIS preparation will be through OSM.
- e. The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the Signatories to this MOU. All requests for release of any information to anyone outside of the Signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.
- f. In particular, the Cooperator will provide appropriate information and comments on the following topics:
  - i. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of

- surface coal mining and reclamation programs for which the Cooperator has special expertise or jurisdiction;
- ii. The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. The Cooperator's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.
  - iii. At the administrative draft stage of the EIS, the Cooperator will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.
  - iv. The Cooperator's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the Cooperator.
  - v. Information, comments, and analysis provided by the Cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which the Cooperator has special expertise or jurisdiction.
  - vi. Other information based on the Cooperator's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.
- g. The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule (see Attachment A). The schedule will be provided to the Cooperator upon signature of this MOU and may be updated on a periodic basis. OSM will provide the Cooperator all updated planning schedules as soon as possible to allow for participation in the process.
  - h. The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.
  - i. The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

### 3. RESPONSIBILITIES OF THE SIGNATORIES:

- a. The Signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.
- b. Each Signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.
- c. For activities related to EIS development, the Signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The Signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.
- d. The Signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the Cooperator has no comment on the material reviewed.
- e. Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the Signatories to perform beyond the respective authority of each, or requires the Signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

### C. TERMS AND CONDITIONS

1. This MOU will take effect immediately upon being executed.
2. Both Signatories must agree to any changes, modifications, and amendments in writing. Either Signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.
3. If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### D. LIMITATIONS

1. All commitments made in this MOU are subject to the availability of appropriated funds and each Signatory's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the Signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both Signatories.
2. This MOU does not direct or apply to any person outside OSM and the Cooperator.
3. This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial

review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

4. This MOU in no way restricts either Signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the Signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

#### E. STIPULATIONS

1. The Signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The Cooperator will perform its duties as a cooperating agency.
2. The Signatories will: Complete tasks mutually agreed to according to the planning schedule which will be provided separately (Attachment A). Each Signatory will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the Cooperator designated representatives. The Signatories will identify their designated representatives by letter.
3. OSM will serve as lead agency for the development of the EIS.

#### F. OTHER PROVISIONS

1. **Authorities not altered.** Nothing in this MOU alters, limits or supersedes the authorities and responsibilities of any Signatory on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Signatories to perform beyond its respective authority.
2. **Financial obligations.** Nothing in this MOU shall require any of the Signatories to assume any obligation or expend any sum in excess of authorization and appropriations available.
3. **Immunity and Defenses Retained.** Each Signatory retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU. The State of Wyoming does not waive sovereign immunity by entering into this MOU and specifically retains immunity and all defenses available to it as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.
4. **Conflict of interest.** The Signatories agree not to utilize any individual for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EIS.
5. **Documenting disagreement or inconsistency.** Where OSM and the Cooperator disagree on significant elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the

Cooperator may document its views and submit them as comments to the Draft EIS and the Proposed/Final EIS.

6. **Management of information.** The Cooperator acknowledges that all data and information provided will become part of the OSM's official record and will be available for public review, except as restricted by the Freedom of Information Act and/or the Privacy Act. The Cooperator agrees that internal working draft documents for the development of the EIS will not be made available for review by individuals or entities other than the Signatories to this MOU. All draft documents are part of the official OSM record and may only be released by OSM to the extent allowed by the Freedom of Information act and/or the Privacy act. The Signatories agree that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public.
7. **Responsibility for decision making.** While the Signatories agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that the OSM retains final responsibility for the decisions identified in the EIS.

#### **G. AGENCY REPRESENTATIVES**

1. Each Party will designate a representative and alternate representative, as described in Attachment B, to ensure coordination between the Cooperator and OSM during the planning process. Each Party may change its representative at will by providing written notice to the other Party.

#### **H. ADMINISTRATION OF THE MOU**

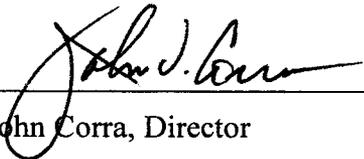
1. **Approval.** This MOU becomes effective upon signature by the authorized officials of all the Parties.
2. **Amendment.** This MOU may be amended through written agreement of all Signatories.
3. **Termination.** If not terminated earlier, this MOU will end when the Final EIS is issued by OSM. Any Party may end its participation in this MOU by providing written notice to the other Party.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

4. **Entirety of Agreement.** This MOU, including Attachments A and B, consisting of (11 pages represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

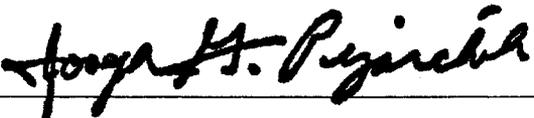
The Signatories have executed this MOU on the dates shown below.

Wyoming Department of Environmental Quality  
122 West 25<sup>th</sup> Street, Cheyenne, WY

  
\_\_\_\_\_  
John Corra, Director

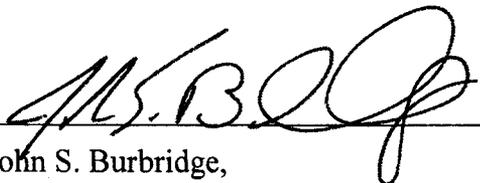
Date 8/29/10

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

  
\_\_\_\_\_  
Joseph G. Pizarchik, Director

Date AUG 31 2010

Approval as to Form:

  
\_\_\_\_\_  
John S. Burbridge,  
Senior Assistant Attorney General

Date 8-24-10

**ATTACHMENT A**  
**Concise Timeline**  
**Stream Protection Rule EIS**  
**August 16, 2010**

- 8/25/2010 Signed MOUs due from cooperating agencies
- 8/30/2010 Meeting/telecom with cooperating agencies during this week
- Responsibilities
  - Expectations
  - Review of Chapter 1
- 8/31/2010 Scoping report provided by contractor to OSM for review
- 9/9/2010 Chapter 2 (Description of Proposed Action and Alternatives) provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 9/15/2010 OSM approves scoping report.
- 9/17/2010 Comments on Chapter 2 due to OSM from cooperating agencies and internal reviewers.
- 9/18/2010 OSM submits consolidated comments on Chapter 2
- 10/21/2010 Chapter 3 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 10/29/2010 Comments on Chapter 3 due to OSM from to cooperating agencies and internal reviewers.
- 11/1/2010 OSM submits consolidated comments on Chapter 3
- 11/5/2010 Chapter 4 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 11/15/2010 Comments on Chapter 4 due to OSM from to cooperating agencies and internal reviewers.
- 11/16/2010 OSM submits consolidated comments on Chapter 4
- 11/19/2010 Preliminary draft EIS (PDEIS) sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.
- 11/29/2010 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.

**ATTACHMENT B**  
**Agency Representatives**

**Office of Surface Mining Reclamation and Enforcement**

Primary Representative: John R. Craynan, P.E., Chief, Division of Regulatory Support  
(202) 208-2866

**State of Wyoming**

Primary Representative: Donald R. McKenzie, Administrator, Land Quality Division  
(307) 777-7046

S-11-m

VICTOR G. CARRILLO, *CHAIRMAN*  
ELIZABETH A. JONES, *COMMISSIONER*  
MICHAEL L. WILLIAMS, *COMMISSIONER*



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

## RAILROAD COMMISSION OF TEXAS

### SURFACE MINING AND RECLAMATION DIVISION

August 25, 2010

**Sent by Facsimile, Email and Overnight Mail**

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

Dear Mr. Pizarchik,

Enclosed are the two signed copies of the memorandum of understanding sent by your letter dated August 16, 2010. I look forward to reviewing the first EIS material that will be sent to us next month.

I appreciate the opportunity to participate in this process and look forward to hearing from you to begin the preparation of coordinating documents.

Sincerely,

A handwritten signature in black ink that reads "John E. Caudle".

John E. Caudle, Director  
Surface Mining and Reclamation Division

JEC/sck

xc: John Craynon, Chief, Division of Regulatory Support, OSMRE  
Ervin Barchenger, Director, Mid-Continent Regional Director, OSMRE  
Al Clayborne, Tulsa Field Office Director, OSMRE

Concise Timeline  
Stream Protection Rule EIS  
August 16, 2010

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- 11/16/2010 OSM submits consolidated comments on Chapter 4
- 11/19/2010 Preliminary draft EIS (PDEIS) sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.
- 11/29/2010 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.

11/30/2010 OSM submits consolidated comments on PDEIS to contractor

12/6/2010 OSM to schedule meeting/telecom with cooperating agencies

1/5/2011 Contractor to hold reconciliation meeting with OSM and cooperating agencies (3 day meeting)

1/19/2011 Revised PDEIS sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.

1/27/2011 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers

1/28/2011 OSM submits consolidated comments on PDEIS to contractor

2/4/2011 Final camera-ready DEIS provided to OSM

**MEMORANDUM OF UNDERSTANDING**

between

The Office of Surface Mining Reclamation and Enforcement

and

Railroad Commission of Texas, Surface Mining and Reclamation Division

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

**A. STATEMENT OF PURPOSE, BACKGROUND**

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Railroad Commission of Texas, Surface Mining and Reclamation Division (TXSMRD) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM’s environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

- 1. SMCRA
- 2. NEPA and implementing regulations, cited above
- 3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the TXSMRD to enter into this MOU includes, but is not limited to:

- 1. <Insert authority> *Texas Surface Coal Mining & Reclamation Act, Texas Natural Resources Code, Chapter 134.*
- 2. <Insert authority> *Special expertise based on over 30 years of implementing SMCRA based laws and regulations.*

**B. SIGNATORIES’ ROLES AND RESPONSIBILITIES**

This MOU describes OSM’s and the Cooperator’s roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM’S ROLE:** OSM is the lead agency for the federal government’s preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the TXSMRD written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The TXSMRD is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

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All TXSMRD input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which TXSMRD has special expertise or jurisdiction.
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The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to TXSMRD upon signature of this MOU and may be updated on a periodic basis. OSM will provide TXSMRD all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

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This MOU does not direct or apply to any person outside OSM and the TXSMRD.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the with the exception of each cooperator's comments required to be made public according to law.

### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The TXSMRD will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the TXSMRD designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that

contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the TXSMRD cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the TXSMRD, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

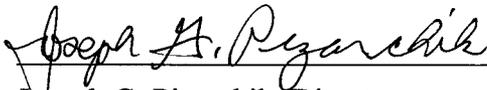
Railroad Commission of Texas, Surface Mining and Reclamation Division  
1701 North Congress Avenue, Austin, TX



John E. Caudle, Director

Date August 25, 2010

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC



Joseph G. Pizarchik, Director

Date 8-31-10

**COMPLETED**

ID:

Subject:

Author:

From:

To:

Signature Date:

Due Date:

Completion Date:

Correspondence Type:

Action Office:

Comments:

Date	Action	Responsible Party
1-Sep-2010	Forwarded to mail & close out	M.Mitchell/APWalker
31-Aug-2010	Signed By	Joe Pizarchik
31-Aug-2010	Submitted for Signature	Joe Pizarchik
31-Aug-2010	Received By	Patrick Braxton
26-Aug-2010	Forwarded for Action	Angie Poole-Walker
26-Aug-2010	Received By	Patrick Braxton

S-9-m



ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR NATURAL RESOURCES

Steven L. Beshear  
Governor

2 Hudson Hollow  
Frankfort, Kentucky 40601  
Phone: (502) 564-6940  
Fax: (502) 564-5698  
www.eec.ky.gov  
www.dnr.ky.gov

Leonard K. Peters  
Secretary

Carl E. Campbell  
Commissioner

August 24, 2010

Honorable Joseph Pizarchik  
Office of Surface Mining Reclamation  
And Enforcement  
South Interior Building, Room 233  
1951 Constitution Avenue, NW  
Washington, DC 20240

Dear Mr. Pizarchik

Please find attached two signed copies of the Memorandum of Understanding between Office of Surface Mining and Kentucky Department for Natural Resources for EIS activities under NEPA for Stream Protection rulemaking. Please provide this office with a signed copy of this document when finalized. Please feel free to contact Mr. Paul Rothman or me should you have any questions in the interim.

Sincerely,

Carl E. Campbell  
Commissioner

DOICOM  
OFFICE OF THE COMMISSIONER  
2010 AUG 21 PM 3:45

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Commonwealth of Kentucky, Energy and Environment Cabinet,

Department for Natural Resources

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Natural Resources (KYDNR) (the Cooperator) (collectively referred to as the signatories) is to establish responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA;
2. NEPA and implementing regulations, cited above; and
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the KYDNR to enter into this MOU includes, but is not limited to:

Kentucky Revised Statutes (KRS) 350.020, 350.050(2) and 350.465(3)(i).

### SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the cooperator with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the KYDNR written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The KYDNR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review (as established in the schedule) and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the KYDNR has special expertise or jurisdiction. Information, comments, and analysis provided by the Cooperator may address, but are not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and

reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which KYDNR has special expertise or jurisdiction.

All KYDNR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which KYDNR has special expertise or jurisdiction;
- b. KYDNR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. KYDNR's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, KYDNR will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.

KYDNR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the KYDNR.

Information, comments, and analysis provided by the Cooperator may address, but are not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which KYDNR has special expertise or jurisdiction.

- c. Other information based on KYDNR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to KYDNR upon signature of this MOU and may be updated on a

periodic basis. OSM will provide KYDNR all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have its representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the KYDNR has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including

those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the KYDNR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the signatories, the United States, its agencies, its officers, or any person; nor does it constitute final agency action on any issue.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

#### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The KYDNR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the KYDNR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

#### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the signatories. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the KYDNR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Commissioner of the KYDNR, or their representatives, who will attempt to resolve the dispute. The Director and the

Commissioner will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

Commonwealth of Kentucky, Energy and Environment Cabinet,  
Department for Natural Resources  
2 Hudson Hollow Road, Frankfort, KY

Carl E. Campbell  
Carl E. Campbell, Commissioner

Date August 24, 2010

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

Joseph G. Pizarchik  
Joseph G. Pizarchik, Director

Date 8-31-10

S-8-M



New Mexico Energy, Minerals and Natural Resources Department

---

**Bill Richardson**  
Governor

Jim Noel  
Cabinet Secretary  
Karen W. Garcia  
Deputy Secretary

September 14, 2010

John R. Craynon, P.E.  
Chief, Division of Regulatory Support  
Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW,  
Washington, DC 20240

Re: Agreement between OSMRE and EMNRD

Dear Mr. Craynon:

Bill Brancard, General Counsel for the Energy, Minerals and Natural Resources Department, Mining and Minerals Division, (EMNRD) has asked that I send you the enclosed agreements between the Office of Surface Mining Reclamation and Enforcement and EMNRD.

Please return two fully-executed Agreements to Mr. Brancard at the address below:

Bill Brancard  
EMNRD  
Office of General Counsel  
1220 South Saint Francis Drive  
Santa Fe, N.M., 87505

Sincerely,



Denise Zendel  
Contracts Analyst



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
AND  
NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,  
FOR EIS ACTIVITIES UNDER NEPA FOR STREAM PROTECTION RULEMAKING  
SEPTEMBER, 2010**

**A. STATEMENT OF PURPOSE, BACKGROUND**

The purpose of this Memorandum of Understanding ("MOU") between the Office of Surface Mining Reclamation and Enforcement ("OSM") and the New Mexico Energy, Minerals and Natural Resources Department ("Cooperator") (collectively, OSM and Cooperator shall be referred to as the "Signatories") establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement ("EIS") under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. ("NEPA") for a rulemaking concerning stream protection (the "Rulemaking") under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. ("SMCRA"). This MOU implements NEPA, consistent with the Council on Environmental Quality ("CEQ") regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the Cooperator to enter into this MOU includes, but is not limited to:

New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 to -36

**B. SIGNATORIES' ROLES AND RESPONSIBILITIES**

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the Signatories, with regard to preparation of the EIS.

1. **OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

- a. OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.
- b. OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.
- c. OSM will provide the Cooperator with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.
- d. When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.
- e. OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.
- f. In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.
- g. OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.
- h. OSM will provide to the Cooperator written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.
- i. In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

## 2. THE COOPERATOR'S ROLE:

- a. The Cooperator is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.
- b. The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.
- c. The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs and other areas for which the Cooperator has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which Cooperator has special expertise or jurisdiction.
- d. All Cooperator input to the process of EIS preparation will be through OSM.
- e. The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure, to the extent permitted by State law, these documents will not be made available for review by individuals or entities other than the Signatories to this MOU. The Cooperator will inform OSM of all requests for release of any information to anyone outside of the Signatories. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM; provided that if copies of same are in the Cooperator's files, the Cooperator's release of such documents will be governed by State law. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under

- federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.
- f. In particular, the Cooperator will provide appropriate information and comments on the following topics:
- i. Data on surface coal mining and reclamation operations, stream protection, environmental compliance data, and cost data related to the implementation of surface coal mining and reclamation programs for which the Cooperator has special expertise or jurisdiction;
  - ii. The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to surface coal mining and reclamation regulatory programs. The Cooperator's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.
  - iii. At the administrative draft stage of the EIS, the Cooperator will review technical documents on impacts to surface coal mining and reclamation regulatory programs and will advise the OSM on the technical adequacy and completeness of these documents.
  - iv. The Cooperator's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the Cooperator.
  - v. Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing surface coal mining and reclamation regulatory programs; relevant statutory and regulatory requirements related to surface coal mining and reclamation; impacts of alternatives on surface coal mining and reclamation regulatory programs; and conclusions regarding alternatives with respect to surface coal mining and reclamation regulatory programs or other areas for which the Cooperator has special expertise or jurisdiction.
  - vi. Other information based on the Cooperator's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.
- g. The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to the Cooperator upon signature of this MOU and may be updated on a periodic basis. OSM will provide the Cooperator all updated planning schedules as soon as possible to allow for participation in the process.

- h. The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.
- i. The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

### **3. RESPONSIBILITIES OF THE SIGNATORIES:**

- a. The Signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.
- b. Each Signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.
- c. For activities related to EIS development, the Signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The Signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.
- d. The Signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the Cooperator has no comment on the material reviewed.
- e. Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the Signatories to perform beyond the respective authority of each, or requires the Signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

### **C. TERMS AND CONDITIONS**

- 1. This MOU will take effect immediately upon being executed.
- 2. Both Signatories must agree to any changes, modifications, and amendments in writing. Either Signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

3. If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

#### **D. LIMITATIONS**

1. All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.
2. This MOU does not direct or apply to any person outside OSM and the Cooperator.
3. This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
4. This MOU in no way restricts either Signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the Signatories to act as provided by statute or regulation or as binding beyond their respective authorities.
5. The Signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act or a New Mexico Inspection of Public Records Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of the Cooperator's comments required to be made public according to law.

#### **E. STIPULATIONS**

1. The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The Cooperator will perform its duties as a cooperating agency.
2. The Signatories will complete tasks mutually agreed to according to the planning schedule which will be provided separately. Each Signatory will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and

the Cooperator designated representatives. The Signatories will identify their designated representatives by letter.

3. OSM will serve as lead agency for the development of the EIS.

#### F. DISPUTES

The following process shall be utilized to resolve any conflict or disagreement between the Signatories. The designated representatives of the Signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each Signatory's position and recommendations for resolution. If the Signatories are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through this process. The following procedures shall be utilized to resolve any conflict or disagreement between the Signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the Cooperator cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Secretary of the Cooperator, or their representatives, who will attempt to resolve the dispute. The agency heads will attempt to negotiate a decision resolving the dispute within 14 days after being notified. A decision will be binding upon the Signatories. In every case, the decision rests with the Signatory exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

The signatories have executed this MOU on the dates shown below.

**NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
1220 SOUTH ST. FRANCIS DRIVE, SANTA FE, N.M.**

  
\_\_\_\_\_  
James Noel, Cabinet Secretary

Date 9.14.10

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT  
1951 CONSTITUTION AVENUE, NW, WASHINGTON, D.C.**

  
\_\_\_\_\_  
Joseph G. Pizarchik, Director

Date 9-29-10

**MEMORANDUM OF UNDERSTANDING**

between

The Office of Surface Mining Reclamation and Enforcement

and

The U.S. Fish and Wildlife Service

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

**A. STATEMENT OF PURPOSE, BACKGROUND**

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the U.S. Fish and Wildlife Service (FWS) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531).

The FWS has responsibility and authority for protecting fish and wildlife resources pursuant to and in accordance with the following statutes: Fish and Wildlife Coordination Act (16 U.S.C. 661 et Seq.), Endangered Species Act (16 U.S.C. 1531 et Seq.), Migratory Bird Treaty Act (16 U.S.C. 703-712), and the National Environmental Policy Act (Public Law 91-190, 42 U.S.C. 4321-4347).

**B. SIGNATORIES' ROLES AND RESPONSIBILITIES**

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project; the conclusions of the environmental analysis, including which alternatives are selected and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the FWS written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The FWS is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to fish and wildlife and related environmental resources and other areas for which the FWS has special expertise or jurisdiction. Information, comments, and analysis

provided by the cooperator may address, but are not limited to, the following: data and analyses regarding existing fish and wildlife populations and habitat; relevant statutory and regulatory requirements related to fish and wildlife and related environmental resources or other areas for which FWS has special expertise or jurisdiction. Each of the FWS field offices involved in review of the draft EIS will participate to extend that limited staffing and budgets allow and commensurate with the potential impacts of the project on resources within the interests of FWS and the particular office.

All FWS input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All decisions on requests for release of any information to anyone outside of the signatories must be made by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide information and comments on specific topics and issues as follows:

- a. FWS will provided appropriate fish and wildlife data, habitat quality and biological assessment protocols, environmental compliance data, and cost data related to the implementation of fish and wildlife protection measures for which FWS has special expertise or jurisdiction.
- b. FWS will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to fish and wildlife and related environmental resources. FWS's role as a cooperating agency is to provide guidance to OSM in preparing the fish and wildlife and related environmental resource analyses and to provide technical review of these analyses for the EIS. FWS's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the FWS.
- c. At the administrative draft stage of the EIS, FWS will review technical documents on impacts to fish and wildlife and related environmental resources and will advise OSM on the technical adequacy and completeness of these documents.
- d. Information to be provided or reviewed by FWS may include, but is not limited to, the following: data and analyses regarding existing fish and wildlife populations and habitat; relevant statutory and regulatory requirements related to fish and wildlife and related environmental resources; impacts of alternatives on fish and wildlife and related environmental resources; and conclusions regarding alternatives with respect to fish and wildlife and related environmental resources or other areas for which FWS has special

expertise or jurisdiction. The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

- e. The Cooperator will provide other information based on FWS's special expertise or jurisdiction that may be relevant to the EIS data or analysis.
- f. The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a timeframe consistent with the planning schedule. The schedule will be provided to FWS upon signature of this MOU and may be updated on a periodic basis. OSM will provide FWS all updated planning schedules as soon as possible to allow for participation in the process.
- g. The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have its representatives attend scheduled meetings pertinent to FWS's responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any conflicts or disagreements.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that, if comments are not provided in a timely manner, OSM may consider the lack of comments and input to indicate that the FWS has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

### **C. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

### **D. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the FWS.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU or the EIS shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents that are privileged, confidential, pre-decisional, or deliberative shall not be released to the public, except as required by law pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public by law.

### **E. STIPULATIONS**

The signatories will comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The FWS will perform its duties as a cooperating agency.

The signatories will complete tasks mutually agreed to according to the planning schedule which will be provided separately. Each agency will be responsible for the tasks assigned, and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in

writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the FWS designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

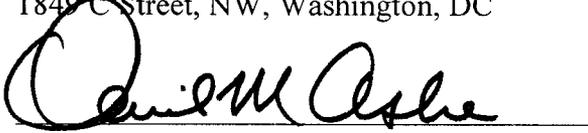
**F. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly states each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the FWS cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the FWS, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In case there is a disagreement between the Directors, the matter will be elevated to the appropriate Assistant Secretaries within the Department of the Interior for resolution. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

The U.S. Fish and Wildlife Service  
1849 C Street, NW, Washington, DC

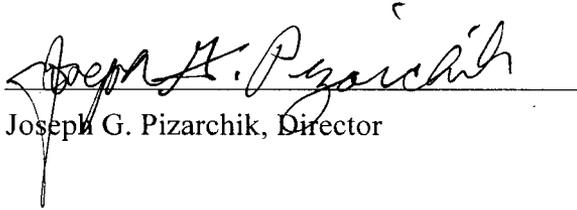


Date 10.13.10

Director

**ACTING**

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC



Date 12-7-10

Joseph G. Pizarchik, Director



United States Department of the Interior

F-3-m

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
Washington, D.C. 20240

Ms. Cynthia Giles  
Assistant Administrator for Enforcement  
and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (ARS-7235)  
Washington, DC 20460

AUG 16 2010

Dear Ms. Giles:

In response to your letter of July 30, 2010, which accepted our invitation to become a cooperating agency on the preparation of an environmental impact statement (EIS) for the new stream protection rulemaking, we are providing you with a memorandum of understanding (MOU) for your signature. This MOU provides for the commitment, in general terms, that we are asking you to make, and also provides the commitment that we are making to you. In order to facilitate preparation of the draft EIS in the time frame we have available, we are asking that you sign the two copies of the MOU and return it to us no later than August 25, 2010. As the signatory of the letter to us, we have prepared the MOU for your signature. In addition, please add the authorities under which you can sign the MOU to the first page of the MOU.

As you will note, we are providing you a schedule for the development of the EIS separately from the MOU. The schedule is also enclosed. The first item is a teleconference which will be scheduled for the week of August 31, 2010. Additionally, the first EIS material, **Chapter 2, Description of Proposed Action and Alternatives**, will be provided for review on September 9, 2010, with comments due back to OSM on September 15, 2010. All materials that will be shared with you should be considered as "For Official Use Only -- Deliberative Process Material" and should not be shared outside of your organization.

The Office of Surface Mining Reclamation and Enforcement (OSM) is designating John Craynon, Chief, Division of Reclamation Support, and EIS team leader as our point of contact. Based on the letter you sent us, we believe that Elaine Suriano of the Office of Federal Activities is the point of contact for your agency. Please let us know if there is another point of contact that we should work with.

Should you have questions about the MOU, the schedule or any other matter related to being a cooperating agency or any other matter related to the preparation of the EIS, please do not hesitate to contact me at (202) 208-4006 or [jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov). Alternatively, Mr. Craynon may be contacted at (202) 208-2866 or [jcraynon@osmre.gov](mailto:jcraynon@osmre.gov).

Sincerely,

  
Joseph G. Pizarchik  
Director

Enclosures

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

The U.S. Environmental Protection Agency

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the U.S. Environmental Protection Agency (EPA) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the [Agency] to enter into this MOU includes, but is not limited to:

1. <Insert authority>
2. <Insert authority>

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the EPA written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The EPA is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to air and water quality and other areas for which the EPA has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing air and water quality; relevant air and water quality standards; impacts of alternatives on air and water quality; and conclusions regarding alternatives with respect to air and water quality or other areas for which EPA has special expertise or jurisdiction.

All EPA input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Socio-economic data, environmental compliance data, and cost data related to the implementation of environmental protection data for which EPA has special expertise or jurisdiction;
- b. EPA will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to air and water quality. EPA's role as a cooperating agency is to provide guidance to OSM in preparing the air and water quality analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, EPA will review technical documents on air and water impacts and will advise the OSM on the technical adequacy and completeness of these documents.

EPA's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the independent review of the EIS which EPA conducts pursuant to NEPA and section 309 of the Clean Air Act, 42 U.S.C. 7609.

Information to be provided or reviewed by EPA may include, but is not limited to, the following: data and analyses regarding existing air and water quality; Federal, State, tribal, and local air and water quality standards; impacts of alternatives on air and water quality; modeling; and conclusions regarding the impacts of alternatives with respect to air and water quality.

- c. Other information based on EPA's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to EPA upon signature of this MOU and may be updated on a periodic basis. OSM will provide EPA all updated planning schedules as soon as possible to allow for EPA participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the EPA has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including

those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the EPA.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents that are privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as required to be released by law pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the with the exception of each cooperator's comments required to be made public by law.

#### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The EPA will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and EPA designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

#### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and EPA cannot resolve any contentious issue within 14

days, the issue will be raised with the Director of OSM, and the Administrator of the EPA, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

The U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, Washington, DC

\_\_\_\_\_ Date \_\_\_\_\_  
Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_ Date \_\_\_\_\_  
Joseph G. Pizarchik, Director



S-36-M

# United States Department of the Interior

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Washington, D.C. 20240

AUG 16 2010

Mary Hopkins, Officer  
Wyoming State Historic Preservation Office  
2301 Central Avenue  
Cheyenne, WY 82002

Dear Ms. Hopkins:

In response to your letter of July 23, 2010, which accepted our invitation to become a cooperating agency on the preparation of an environmental impact statement (EIS) for the new stream protection rulemaking, we are providing you with a memorandum of understanding (MOU) for your signature. This MOU provides for the commitment, in general terms, that we are asking you to make, and also provides the commitment that we are making to you. In order to facilitate preparation of the draft EIS in the time frame we have available, we are asking that you sign the two copies of the MOU and return it to us no later than August 25, 2010. As the signatory of the letter to us, we have prepared the MOU for your signature. In addition, please add the authorities under which you can sign the MOU to the first page of the MOU.

As you will note, we are providing you a schedule for the development of the EIS separately from the MOU. The schedule is also enclosed. The first item is a teleconference which will be scheduled for the week of August 31, 2010. Additionally, the first EIS material, **Chapter 2, Description of Proposed Action and Alternatives**, will be provided for review on September 9, 2010, with comments due back to OSM on September 15, 2010. All materials that will be shared with you should be considered as "For Official Use Only -- Deliberative Process Material" and should not be shared outside of your organization.

The Office of Surface Mining Reclamation and Enforcement (OSM) is designating John Craynon, Chief, Division of Reclamation Support, and EIS team leader as our point of contact. Based on the letter you sent us, we believe that you are the point of contact for your agency. Please let us know if there is another point of contact that we should work with.

Should you have questions about the MOU, the schedule or any other matter related to being a cooperating agency or any other matter related to the preparation of the EIS, please do not hesitate to contact me at (202) 208-4006 or [jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov). Alternatively, Mr. Craynon may be contacted at (202) 208-2866 or [jcraynon@osmre.gov](mailto:jcraynon@osmre.gov).

Sincerely,

Joseph G. Pizarchik  
Director

Enclosures

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Wyoming State Historic Preservation Office

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Wyoming State Historic Preservation Office (WYSHPO) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the WYSHPO to enter into this MOU includes, but is not limited to:

1. <Insert authority>
2. <Insert authority>

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the WYSHPO written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The WYSHPO is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources and other areas for which the WYSHPO has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions

regarding alternatives with respect to cultural and historic resources or other areas for which WYSHPO has special expertise or jurisdiction.

All WYSHPO input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on cultural and historic resources, statutory compliance data, and cost data related to the implementation of cultural and historic resources programs for which WYSHPO has special expertise or jurisdiction;
- b. WYSHPO will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources. WYSHPO's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, WYSHPO will review technical documents on impacts to cultural and historic resources and will advise the OSM on the technical adequacy and completeness of these documents.

WYSHPO's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the WYSHPO.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which WYSHPO has special expertise or jurisdiction.

- c. Other information based on WYSHPO's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to WYSHPO upon signature of this MOU and may be updated on a periodic basis. OSM will provide WYSHPO all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the WYSHPO has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the WYSHPO.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

**D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The WYSHPO will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the WYSHPO designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

**E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the WYSHPO cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the WYSHPO, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*



The signatories have executed this MOU on the dates shown below.

Wyoming State Historic Preservation Office  
2301 Central Avenue, Cheyenne, WY

\_\_\_\_\_ Date \_\_\_\_\_  
Mary Hopkins, SHPO

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_ Date \_\_\_\_\_  
Joseph G. Pizarchik, Director

Concise Timeline  
Stream Protection Rule EIS  
August 16, 2010

- 8/25/2010 Signed MOUs due from cooperating agencies.
- 8/30/2010 Meeting/telecom with cooperating agencies during this week:  
- Responsibilities  
- Expectations  
- Review of Chapter 1
- 8/31/2010 Scoping report provided by contractor to OSM for review
- 9/9/2010 Chapter 2 (Description of Proposed Action and Alternatives) provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 9/15/2010 OSM approves scoping report.
- 9/17/2010 Comments on Chapter 2 due to OSM from cooperating agencies and internal reviewers.
- 9/18/2010 OSM submits consolidated comments on Chapter 2
- 10/21/2010 Chapter 3 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 10/29/2010 Comments on Chapter 3 due to OSM from to cooperating agencies and internal reviewers.
- 11/1/2010 OSM submits consolidated comments on Chapter 3
- 11/5/2010 Chapter 4 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 11/15/2010 Comments on Chapter 4 due to OSM from to cooperating agencies and internal reviewers.
- 11/16/2010 OSM submits consolidated comments on Chapter 4.
- 11/19/2010 Preliminary draft EIS (PDEIS) sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.
- 11/29/2010 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.

- 11/30/2010 OSM submits consolidated comments on PDEIS to contractor.
- 12/6/2010 OSM to schedule meeting/telecom with cooperating agencies.
- 1/5/2011 Contractor to hold reconciliation meeting with OSM and cooperating agencies (3 day meeting).
- 1/19/2011 Revised PDEIS sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.
- 1/27/2011 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.
- 1/28/2011 OSM submits consolidated comments on PDEIS to contractor.
- 2/4/2011 Final camera-ready DEIS provided to OSM.



# United States Department of the Interior

S-37-R

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT Washington, D.C. 20240

Ethel Eaton, Senior Policy Analyst  
Commonwealth of Virginia  
Department of Historic Resources  
2801 Kensington Avenue  
Richmond, VA 23221

AUG 10 2010

Dear Ms. Eaton:

In response to your letter of June 30, 2010 which accepted our invitation to become a cooperating agency on the preparation of an environmental impact statement (EIS) for the new stream protection rulemaking, we are providing you with a memorandum of understanding (MOU) for your signature. This MOU provides for the commitment, in general terms, that we are asking you to make, and also provides the commitment that we are making to you. In order to facilitate preparation of the draft EIS in the time frame we have available, we are asking that you sign the two copies of the MOU and return it to us no later than August 25, 2010. As the signatory of the letter to us, we have prepared the MOU for your signature. In addition, please add the authorities under which you can sign the MOU to the first page of the MOU.

As you will note, we are providing you a schedule for the development of the EIS separately from the MOU. The schedule is also enclosed. The first item is a teleconference which will be scheduled for the week of August 31, 2010. Additionally, the first EIS material, **Chapter 2, Description of Proposed Action and Alternatives**, will be provided for review on September 9, 2010, with comments due back to OSM on September 15, 2010. All materials that will be shared with you should be considered as "For Official Use Only -- Deliberative Process Material" and should not be shared outside of your organization.

The Office of Surface Mining Reclamation and Enforcement (OSM) is designating John Craynon, Chief, Division of Reclamation Support, and EIS team leader as our point of contact. Based on the letter you sent us, we believe that you are the point of contact for your agency. Please let us know if there is another point of contact that we should work with.

Should you have questions about the MOU, the schedule or any other matter related to being a cooperating agency or any other matter related to the preparation of the EIS, please do not hesitate to contact me at (202) 208-4006 or [jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov). Alternatively, Mr. Craynon may be contacted at (202) 208-2866 or [jcraynon@osmre.gov](mailto:jcraynon@osmre.gov).

Sincerely,

  
Joseph G. Pizarchik  
Director

Enclosures

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Commonwealth of Virginia Department of Historic Resources  
for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Commonwealth of Virginia Department of Historic Resources (VADHR) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531).

Authority for the VADHR to enter into this MOU includes, but is not limited to:

1. <Insert authority>
2. <Insert authority>

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the VADHR written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The VADHR is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources and other areas for which the VADHR has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions

regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

All VADHR input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on cultural and historic resources, statutory compliance data, and cost data related to the implementation of cultural and historic resources programs for which VADHR has special expertise or jurisdiction;
- b. VADHR will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources. VADHR's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, VADHR will review technical documents on impacts to cultural and historic resources and will advise the OSM on the technical adequacy and completeness of these documents.

VADHR's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the VADHR.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which VADHR has special expertise or jurisdiction.

- c. Other information based on VADHR's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to VADHR upon signature of this MOU and may be updated on a periodic basis. OSM will provide VADHR all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the VADHR has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

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If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including

those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the VADHR.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the exception of each cooperator's comments required to be made public according to law.

#### **D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The VADHR will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the VADHR designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

#### **E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the VADHR cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the VADHR, or their representatives, who will attempt to resolve the dispute. The Directors will

attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

\*\*\*\*\*

The signatories have executed this MOU on the dates shown below.

Commonwealth of Virginia Department of Historic Resources  
2801 Kensington Avenue, Richmond, VA

\_\_\_\_\_ Date \_\_\_\_\_  
Ethel Eaton, Senior Policy Analyst

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_ Date \_\_\_\_\_  
Joseph G. Pizarchik, Director

Concise Timeline  
Stream Protection Rule EIS  
August 16, 2010

- 8/25/2010 Signed MOUs due from cooperating agencies.
- 8/30/2010 Meeting/telecom with cooperating agencies during this week:  
- Responsibilities  
- Expectations  
- Review of Chapter 1
- 8/31/2010 Scoping report provided by contractor to OSM for review
- 9/9/2010 Chapter 2 (Description of Proposed Action and Alternatives) provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 9/15/2010 OSM approves scoping report.
- 9/17/2010 Comments on Chapter 2 due to OSM from cooperating agencies and internal reviewers.
- 9/18/2010 OSM submits consolidated comments on Chapter 2
- 10/21/2010 Chapter 3 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 10/29/2010 Comments on Chapter 3 due to OSM from to cooperating agencies and internal reviewers.
- 11/1/2010 OSM submits consolidated comments on Chapter 3
- 11/5/2010 Chapter 4 provided by contractor to OSM. OSM provides to cooperating agencies and internal reviewers.
- 11/15/2010 Comments on Chapter 4 due to OSM from to cooperating agencies and internal reviewers.
- 11/16/2010 OSM submits consolidated comments on Chapter 4.
- 11/19/2010 Preliminary draft EIS (PDEIS) sent to OSM for review. OSM provides to cooperating agencies and internal reviewers.
- 11/29/2010 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.

- 11/30/2010 OSM submits consolidated comments on PDEIS to contractor.
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- 1/5/2011 Contractor to hold reconciliation meeting with OSM and cooperating agencies (3 day meeting).
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- 1/27/2011 Comments on PDEIS due to OSM from to cooperating agencies and internal reviewers.
- 1/28/2011 OSM submits consolidated comments on PDEIS to contractor.
- 2/4/2011 Final camera-ready DEIS provided to OSM.



# United States Department of the Interior

S-29-m

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Washington, D.C. 20240

Jennie Chinn, Officer  
State Historic Preservation Office  
Kansas Historical Society  
6425 SW 6<sup>th</sup> Avenue  
Topeka, KS 66615-1099

Dear Ms. Chinn:

In response to your letter of July 21, 2010, which accepted our invitation to become a cooperating agency on the preparation of an environmental impact statement (EIS) for the new stream protection rulemaking, we are providing you with a memorandum of understanding (MOU) for your signature. This MOU provides for the commitment, in general terms, that we are asking you to make, and also provides the commitment that we are making to you. In order to facilitate preparation of the draft EIS in the time frame we have available, we are asking that you sign the two copies of the MOU and return it to us no later than August 25, 2010. As the signatory of the letter to us, we have prepared the MOU for your signature. In addition, please add the authorities under which you can sign the MOU to the first page of the MOU.

As you will note, we are providing you a schedule for the development of the EIS separately from the MOU. The schedule is also enclosed. The first item is a teleconference which will be scheduled for the week of August 31, 2010. Additionally, the first EIS material, **Chapter 2, Description of Proposed Action and Alternatives**, will be provided for review on September 9, 2010, with comments due back to OSM on September 15, 2010. All materials that will be shared with you should be considered as "For Official Use Only -- Deliberative Process Material" and should not be shared outside of your organization.

The Office of Surface Mining Reclamation and Enforcement (OSM) is designating John Craynon, Chief, Division of Reclamation Support, and EIS team leader as our point of contact. Based on the letter you sent us, we believe that Tim Weston, Archeologist, is the point of contact for your agency. Please let us know if there is another point of contact that we should work with.

Should you have questions about the MOU, the schedule or any other matter related to being a cooperating agency or any other matter related to the preparation of the EIS, please do not hesitate to contact me at (202) 208-4006 or [jpizarchik@osmre.gov](mailto:jpizarchik@osmre.gov). Alternatively, Mr. Craynon may be contacted at (202) 208-2866 or [jcraynon@osmre.gov](mailto:jcraynon@osmre.gov).

Sincerely,

Joseph G. Pizarchik  
Director

Enclosures

## MEMORANDUM OF UNDERSTANDING

between

The Office of Surface Mining Reclamation and Enforcement

and

Kansas Historical Society

for EIS activities under NEPA for Stream Protection rulemaking

August 25, 2010

### A. STATEMENT OF PURPOSE, BACKGROUND

The purpose of this Memorandum of Understanding (MOU) between the Office of Surface Mining Reclamation and Enforcement (OSM) and the Kansas Historical Society (KHS) (the Cooperator) (collectively referred to as the signatories) establishes responsibilities of each agency concerning preparation of OSM's environmental impact statement (EIS) under the National Environmental Policy Act, 42 U.S.C. § 4371 et seq. (NEPA) for a rulemaking concerning stream protection (the rulemaking) under the Surface Mining Control and Reclamation Act of 1977, 30 USC § 1201 et seq. (SMCRA). This MOU implements NEPA, consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6 and 1501.8, and the January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies (Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act).

Authority for OSM to enter into this MOU includes, but is not limited to:

1. SMCRA
2. NEPA and implementing regulations, cited above
3. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531)

Authority for the KHS to enter into this MOU includes, but is not limited to:

1. <Insert authority>
2. <Insert authority>

### B. SIGNATORIES' ROLES AND RESPONSIBILITIES

This MOU describes OSM's and the Cooperator's roles and establishes a framework for cooperation between the signatories, with regard to preparation of the EIS.

**OSM'S ROLE:** OSM is the lead agency for the federal government's preparation of the draft and final EIS, and has responsibility to ensure compliance with the requirements of NEPA for the rulemaking. In this capacity, OSM has the following responsibilities, among others:

OSM is responsible for requesting participation of other federal, state, and tribal government agencies, as appropriate, and for cooperatively using their expertise in development of the EIS.

OSM has responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included; and making final determinations on the content of the EIS documents.

OSM will provide the signatory with copies of key or relevant documents underlying the EIS that OSM identifies as pertinent to the Cooperator's jurisdictional responsibility or special expertise, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, draft and final EISs.

When providing the Cooperator with documents and working drafts, OSM will, to the extent possible, give a reasonable time for review and return of consolidated and comprehensive comments.

OSM will consider for incorporation, to the extent consistent with SMCRA, NEPA, and other applicable law, and the purpose and need for the underlying federal action, the comments, recommendations, and/or data submitted by the Cooperator in the EIS process. Insofar as possible under the EIS schedule, OSM will provide the Cooperator the opportunity to review appropriate sections of administrative drafts of the EIS to determine if data and comments provided by the Cooperator have been accurately represented.

In instances involving questions as to the content or relevance of any material in the EIS, including all data, analysis, and conclusions, OSM will make the final determination.

OSM will provide the Cooperator with relevant information on the EIS schedule, including review timeframes, and with any changes to the schedule as early as practicable.

OSM will provide to the KHS written or email confirmation of the other cooperating agencies, and their representatives. OSM will timely inform cooperating agencies about the representatives for the EIS.

In meeting these responsibilities, OSM will follow all applicable statutory and regulatory requirements.

**THE COOPERATOR'S ROLE:** The KHS is a cooperating agency on the EIS. OSM recognizes that the Cooperator has jurisdiction and special expertise relevant to the preparation of the EIS.

The Cooperator will provide information, data, and comments to OSM regarding those elements of the EIS, and the data and analyses underlying them, in which it has jurisdictional authority or special expertise or for which OSM requests information and comments. The Cooperator will help collect data to the extent possible, participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS.

The Cooperator will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources and other areas for which the KHS has special expertise or jurisdiction. Information, comments, and analysis provided by the cooperators may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions

regarding alternatives with respect to cultural and historic resources or other areas for which KHS has special expertise or jurisdiction.

All KHS input to the process of EIS preparation will be through OSM.

The Cooperator agrees that all internal working draft documents for the development of the EIS are pre-decisional and will ensure these documents will not be made available for review by individuals or entities other than the signatories to this MOU. All requests for release of any information to anyone outside of the signatories must be determined by OSM, in compliance with federal law. All data, information, draft documents, and comments provided to and considered by OSM, will be part of OSM's working papers related to preparation of the EIS, and OSM will include them as appropriate in the decision record and administrative record for the EIS. These materials may only be released by OSM. The Cooperator understands that all data, information, drafts, and comments provided will be made available by OSM for public review except as protected under federal law including, but not limited to, the Freedom of Information Act, the Privacy Act, and trade secrets law.

In particular, the Cooperator will provide appropriate information and comments on the following topics:

- a. Data on cultural and historic resources, statutory compliance data, and cost data related to the implementation of cultural and historic resources programs for which KHS has special expertise or jurisdiction;
- b. KHS will provide timely review and comments on material provided by OSM pertaining to the preparation of the Draft EIS and subsequent NEPA documents regarding information relating to cultural and historic resources. KHS's role as a cooperating agency is to provide guidance to OSM in preparing analyses and to provide technical review of these analyses for the EIS.

At the administrative draft stage of the EIS, KHS will review technical documents on impacts to cultural and historic resources and will advise the OSM on the technical adequacy and completeness of these documents.

KHS's participation does not imply endorsement of OSM's action or preferred alternative, and does not affect the legal responsibilities of the KHS.

Information, comments, and analysis provided by the cooperator may address, but is not limited to, the following: data and analyses regarding existing cultural and historic resources; relevant statutory and regulatory requirements related to cultural and historic resources; impacts of alternatives on cultural and historic resources; and conclusions regarding alternatives with respect to cultural and historic resources or other areas for which KHS has special expertise or jurisdiction.

- c. Other information based on KHS's special expertise and/or jurisdiction that may be relevant to the EIS data or analysis.

The Cooperator will return consolidated and comprehensive comments on working drafts and other material provided for review to OSM in a time consistent with the planning schedule. The schedule will be provided to KHS upon signature of this MOU and may be updated on a periodic basis. OSM will provide KHS all updated planning schedules as soon as possible to allow for participation in the process.

The Cooperator will not be responsible for the actual preparation of any portion of the EIS or related reports, or for developing any new information; nor will the Cooperator be responsible for the overall adequacy of the EIS.

The Cooperator will designate in writing a representative and backup representative to serve as a contact and ensure coordination during preparation of the EIS. Staff time and budget permitting, the Cooperator will have their representatives attend scheduled meetings pertinent to their responsibilities, and discuss the project and the review process (including agency responsibilities and work schedules). The Cooperator may change a representative at any time by providing a written designation to the other cooperating agencies.

**RESPONSIBILITIES OF THE SIGNATORIES:** The signatories agree to participate in this NEPA evaluation process in good faith and make every effort to resolve any perceived areas of conflict.

Each signatory will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

For activities related to EIS development, the signatories agree not to employ any third party having a financial interest in the outcome of the EIS. The signatories also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS.

The signatories agree that if comments are not provided in a timely manner that OSM may consider the lack of comments and input to indicate that the KHS has no comment on the material reviewed.

Nothing in this MOU limits, affects, or binds the authority or legal responsibility of the signatories to perform beyond the respective authority of each, or requires the signatories to assume any obligation or expend any sum in excess of available authorizations and appropriations.

## **B. TERMS AND CONDITIONS**

This MOU will take effect immediately upon being executed.

Both signatories must agree to any changes, modifications, and amendments in writing. Either signatory may renegotiate or terminate this MOU at any time following at least 30 days written notice.

If not terminated sooner, this MOU will end when the Record of Decision is approved by OSM or the designated official in the Department of the Interior.

## **C. LIMITATIONS**

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the signatories to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both signatories.

This MOU does not direct or apply to any person outside OSM and the KHS.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review; nor does it confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

This MOU in no way restricts either signatory from participating in similar activities with other public or private agencies, governments, organizations, or individuals. Nothing in this MOU will be construed as affecting the authorities of the signatories to act as provided by statute or regulation or as binding beyond their respective authorities.

Any public information releases that reference this MOU, or the EIS, shall be subject to prior approval of OSM. The signatories agree that all inter- and intra-agency documents designated as privileged, confidential, pre-decisional or deliberative shall not be released to the public, except as those subject to release pursuant to a Freedom of Information Act request. No documents shall be released without prior consultation and approval of OSM, except as otherwise required by law. OSM's Office of Communications shall be designated as the Point of Contact for all information releases to the public, with the with the exception of each cooperator's comments required to be made public according to law.

**D. STIPULATIONS**

The signatories will: Comply with all necessary provisions of NEPA. OSM will complete an EIS analyzing the impacts associated with the stream protection rulemaking. The KHS will perform its duties as a cooperating agency.

The signatories will: *Complete tasks mutually agreed to according to the planning schedule which will be provided separately.* Each agency will be responsible for the task assigned and OSM will have overall responsibility for completion of all tasks. Once complete, OSM will confirm, in writing, completion of these tasks. The tasks to be completed and the planning schedule may be updated by mutual agreement of OSM and the KHS designated representatives. The agencies will identify their designated representatives by letter.

OSM will serve as lead agency for the development of the EIS.

**E. DISPUTES**

The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. The designated representatives of the signatories will jointly prepare a document that contains a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the signatories regarding their responsibilities under this MOU. If the designated representatives from OSM and the KHS cannot resolve any contentious issue within 14 days, the issue will be raised with the Director of OSM and the Director of the KHS, or their representatives, who will attempt to resolve the dispute. The Directors will attempt to negotiate a decision resolving the dispute within 14 days after elevation. A decision will be binding upon the agencies. In every case, the decision rests with the agency exercising the statutory or regulatory authority in question. For matters related to the EIS, the final decision rests with the Director of OSM.

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The signatories have executed this MOU on the dates shown below.

Kansas Historical Society  
6425 SW 6<sup>th</sup> Avenue, Topeka, KS

\_\_\_\_\_ Date \_\_\_\_\_  
Jennie Chinn SHPO

Office of Surface Mining Reclamation and Enforcement  
1951 Constitution Avenue, NW, Washington, DC

\_\_\_\_\_ Date \_\_\_\_\_  
Joseph G. Pizarchik, Director

Concise Timeline  
Stream Protection Rule EIS  
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## EPA Response to Congressional Request: Reviewers of Draft OSM EIS

**Explanatory Note:**

Below are two lists:

- List #1 includes EPA’s lead reviewers of OSM’s draft EIS through the cooperating agency process. These individuals reviewed and contributed to EPA’s comments on sections of OSM’s draft EIS through the cooperating agency review process.
- List #2 includes all EPA staff that our records show had received all or part of OSM’s draft EIS. Therefore, this should not be interpreted to suggest that all of these individuals commented on or even read the documents they were provided.

Depending upon the way in which OSM and other agencies have interpreted this request, please ensure that what is passed along includes the appropriate caveats listed above.

### LIST 1: Lead EPA Reviewers (Reviewed and Contributed Comments)

<b>NAME</b>	Elaine Suriano
<b>ORGANIZATION</b>	EPA Office of Federal Activities
<b>TITLE</b>	Environmental Scientist
<b>TELEPHONE</b>	202-564-7162
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Suriano.elaine@epa.gov">Suriano.elaine@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 1, August 11, 2010 Chapter 2, October 5, 2010 Chapter 3, October 25, 2010 Chapter 4, January 13, 2011

<b>NAME</b>	Matt Klasen
<b>ORGANIZATION</b>	EPA Office of Water
<b>TITLE</b>	Special Assistant
<b>TELEPHONE</b>	202-566-0780
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Klasen.matthew@epa.gov">Klasen.matthew@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 1, August 11, 2010 Chapter 2, October 5, 2010 Chapter 3, October 25, 2010 Chapter 4, January 13, 2011

<b>NAME</b>	Tim Landers
<b>ORGANIZATION</b>	EPA Office of Wetlands, Oceans, and Watersheds
<b>TITLE</b>	Environmental Protection Specialist
<b>TELEPHONE</b>	202-566-2231
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Landers.timothy@epa.gov">Landers.timothy@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 1, August 11, 2010 Chapter 2, October 5, 2010 Chapter 3, October 25, 2010 Chapter 4, January 19, 2011

**LIST 2: All EPA Staff Receiving All or Some of OSM's DEIS  
(may or may not have formally reviewed or submitted comments)**

<b>NAME</b>	Suzanne Bohan
<b>ORGANIZATION</b>	EPA Region 8
<b>TITLE</b>	Deputy Director, NEPA Compliance and Review Program
<b>TELEPHONE</b>	303-312-6925
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Bohan.suzanne@epa.gov">Bohan.suzanne@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 2, October 5, 2010 Chapter 3 (EJ), October 28, 2010

<b>NAME</b>	Susan Bromm
<b>ORGANIZATION</b>	EPA Office of Federal Activities
<b>TITLE</b>	Director
<b>TELEPHONE</b>	202-564-5400
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 3 (EJ), October 28, 2010

<b>NAME</b>	Richard Clark
<b>ORGANIZATION</b>	EPA Region 8
<b>TITLE</b>	Wetland Coordinator
<b>TELEPHONE</b>	303-312-6748
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 3 (hydrology), November 3, 2010

<b>NAME</b>	Michael Dunn
<b>ORGANIZATION</b>	EPA Region 3, Environmental Assessment and Innovation Division
<b>TITLE</b>	Special Assistant

<b>TELEPHONE</b>	215-814-2712
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Dunn.michael@epa.gov">Dunn.michael@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 2, October 6, 2010 Chapter 3 (hydrology), November 3, 2010

<b>NAME</b>	David Evans
<b>ORGANIZATION</b>	EPA Office of Wetlands, Oceans, and Watersheds
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 1, August 11, 2010 Chapter 2, October 5, 2010 Chapter 3 (EJ), October 28, 2010

<b>NAME</b>	John Forren
<b>ORGANIZATION</b>	EPA Region 3
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<b>TELEPHONE</b>	215-814-2705
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 1, August 11, 2010 Chapter 2, October 5, 2010 Chapter 3 (EJ), October 28, 2010

<b>NAME</b>	Brian Frazer
<b>ORGANIZATION</b>	EPA Office of Wetlands, Oceans, and Watersheds
<b>TITLE</b>	Chief, Wetlands and Aquatic Resources Regulatory Branch
<b>TELEPHONE</b>	202-566-1652
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 2, October 5, 2010 Chapter 3 (EJ), October 28, 2010 Chapter 4, January 19, 2011

<b>NAME</b>	Stephanie Fulton
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<b>ORGANIZATION</b>	EPA Region 4
<b>TITLE</b>	Ecologist
<b>TELEPHONE</b>	404-562-9413
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 2, October 5, 2010 Chapter 3 (EJ), October 28, 2010

<b>NAME</b>	Bert Garcia
<b>ORGANIZATION</b>	EPA Region 8
<b>TITLE</b>	Director, Ecosystems Protection Program
<b>TELEPHONE</b>	303-312-6670
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Garcia.bert@epa.gov">Garcia.bert@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 3 (hydrology), November 3, 2010

<b>NAME</b>	Ross Geredien
<b>ORGANIZATION</b>	EPA Office of Wetlands, Oceans, and Watersheds
<b>TITLE</b>	ORISE Fellow
<b>TELEPHONE</b>	202-566-1466
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<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 2, January 25, 2011 Chapter 4, January 19, 2011

<b>NAME</b>	Jim Giattina
<b>ORGANIZATION</b>	EPA Region 4
<b>TITLE</b>	Director, Water Protection Division
<b>TELEPHONE</b>	404-562-9470
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Giattina.jim@epa.gov">Giattina.jim@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 4, January 25, 2011

<b>NAME</b>	Danny Gogal
<b>ORGANIZATION</b>	EPA Office of Environmental Justice
<b>TITLE</b>	Tribal Coordinator / IWG Program Manager

<b>TELEPHONE</b>	202-564-2576
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Gogal.danny@epa.gov">Gogal.danny@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 3 (EJ), November 4, 2010

<b>NAME</b>	James Hanley
<b>ORGANIZATION</b>	EPA Region 8, NEPA Compliance & Review Program
<b>TITLE</b>	Mining Engineer
<b>TELEPHONE</b>	303-312-6725
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Hanley.james@epa.gov">Hanley.james@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 2, October 5, 2010 Chapter 3 (EJ), October 28, 2010

<b>NAME</b>	Robert Hargrove
<b>ORGANIZATION</b>	EPA Office of Federal Activities
<b>TITLE</b>	Director, NEPA Compliance Division
<b>TELEPHONE</b>	202-564-7157
<b>MAILING CONTACT INFO (EMAIL)</b>	<a href="mailto:Hargrove.robert@epa.gov">Hargrove.robert@epa.gov</a>
<b>DATE(s) DRAFT CHAPTERS OF THE EIS WERE RECEIVED</b>	Chapter 1, August 11, 2010 Chapter 2, October 5, 2010

<b>NAME</b>	Martin Hestmark
<b>ORGANIZATION</b>	EPA Region 8
<b>TITLE</b>	Deputy Assistant Regional Administrator
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Bill Brancard	State of New Mexico	General Counsel	505-476-321	bill.brancard@state.nm.us	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010 , Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
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Chris Yde	Montana Department of Environmental Quality	Supervisor, Coal and Uranium Program	406-444-4967	cyde@mt.gov	Draft Chapter 1; October 5, 2010, Draft Chapter 2; October 5, 2010, Draft Chapter 3; October 25, 2010, Revised Draft Chapter 3; October 26, 2010, Draft Chapter 3.19; October 28, 2010, Draft Chapter 3.6; November 2, 2010, Draft Chapter 4; January 13, 2011 – available on SharePoint site

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Dianne Shawley	OSM	Counsel to the Director	202-208-4222	dshawley@osmre.gov	Chapters 2, 10/14/10, Chapter 4, 1/13/11
Don McKenzie	State of Wyoming	Administrator, Land Quality Division	307-777-7756	dmcken@wyo.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010 , Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
Ed Coleman	State of Montana	Bureau Chief	406-444-4973	ecoleman@mt.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010 , Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
Emily D. Morris	Office of the Solicitor	Attorney-Advisor	202.208.5236	Emily.Morris@sol.doi.gov	Various Times

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Ervin J. Barchenger	OSM	Regional Director	618-463-6460	ebarchenger@osmre.gov	Chapter 1, 10/5/2010, Chapter 2, 10/5/2010, Chapter 3, 10/25/2010, Draft Conceptual RIA, 10/26/2010, Chapter 3, Surface Water, 11/2/2010
Ethel Eaton	Virginia Department of Historic Resources	Senior Policy Analyst	804-482-6088	ethel.eaton@dhr.virginia.gov	Chapter 1, November 5, 2010; Chapter 2, November 5, 2010; Chapter 3.6, November 2, 2010; Chapter 3.9-10, November 25, 2010; Chapter 3.11 - 3.14, 3-15-18, 3-20, November 25, 2010; Chapter 4, January 13, 2011
Foster Kirby	OSM	Archaeologist	303-293-5039	fkirby@osmre.gov	Chapter 3, 10/25/2010 & 10/26/2010, Chapter 4, 1/12/2011
Gail Smith	OSM	Manager, Program Support Branch	859-260-3908	gsmith@osmre.gov	Chapter 1, August 15, 2010 (approximate date), Chapter 2, October 5, 2010, Chapter 3, October 27, 2010 (approximate date), Chapter 4, January 24, 2011

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Gregory Conrad	Interstate Mining Compact Commission	Director	703-709-8654	gconrad@imcc.isa.us	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010 , Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
Harry Payne	OSM	Environmental Protection Specialist	412-937-2145	hpayne@osmre.gov	Chapters 1-4, February 24, 2011
Jason R. Stoltz	OSM	Mining Engineer	859-260-3922	jstoltz@osmre.gov	Chapter 1, 8/15/2010, Chapter 2, 10/5/2010 & 11/4/2010, Chapter 3, 4, 5, 6, 7, 8, 9, 4/14/2011
Jeffrey Coker	OSM	Senior Physical Scientist	865-545-4103 ext 155	jcoker@osmre.gov	Chapter 1, 9/15/10, Chapter 2, 10/15/10, Chapter 3, 10/25/10 (except Section 3.6 and Section 3.19, Chapter 3 Section 3.19, 10/28/10, Chapter 3 Section 3.6, 11/2/10, Chapter 4, 1/13/11, Chapter 5, 2/22/11, Chapters 6 – 9, on or about 2/28/11
Jim O'Hara	State of New Mexico	Coal Mine Reclamation Program Manager	505-476-3413	Jim.ohara@state.nm.us	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010 , Draft Chapter 4 – email notice of SharePoint posting 1/10/2011

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John Baza	State of Utah	Director, Utah Division of Oil, Gas & Mining	801-538-5334	johnbaza@utah.gov	Chapter 1, October 5, 2010; Chapter 2, October 5, 2010; Chapter 3 (partial initial), October 25, 2010, Chapter 3 (partial corrected), October 26, 2010, Chapter 3 (3.19 - Socioeconomics), October 28, 2010, Chapter 3 (3.6 - Surface Water), November 2, 2010, Chapter 4, January 13, 2011
John Caudle	Railroad Commission of Texas, Surface Mining and Reclamation Division	Director, Surface Mining and Reclamation Division	512-463-6901	John.caudle@rrc.state.tx.us	Chapter 2, October 5, 2010, Chapter 1, October 5, 2010, Chapter 3, October 25, 2010, Chapter 3.19, October 28, 2010, Chapter 4 Table of Contents, October 28, 2010, Chapter 4, January 13, 2011
Joseph L. Blackburn	OSM	Field Office Director	859-260-3902	jblackburn@osmre.gov	Chapter 1, July 27, 2010, Chapter 2, October 5, 2010, Chapter 3, October 27, 2010, Chapter 4, January 18, 2011
Karen Jass	OSM	Mining Engineer	303-293-5037	kjass@osmre.gov	Chapter 3, October 25, 2010, Chapter 2 & 4, January 13, 2011

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Kevin Garnett	OSM	Mining Engineer	618-463-6463 x5135	kwgarnett@osmre.gov	Chapter 1, 10/5/2010, Chapter 2, 10/5/2010. Chapter 3, 10/25/2010. Chapter 4, 1/13/2011
Kristen Guerriero	Office of the Solicitor	Attorney-Advisor	303-231-5353 ext. 552	kristen.guerriero@sol.doi.gov	Chapter 4, January 18, 2011, Chapter 2, January 20, 2011
Lawrence Emmons	OSM	Soil Scientist	618-463-6460	lemmons@osmre.gov	Chapter 3, 10/26/10, Chapters 2 and 4, 1/13/11
Leslie S. Vincent	State of Virginia	Manager	276-523-8156	les.vincent@dmme.virginia.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010 , Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
Lewis Halstead	West Virginia DEP	Deputy Director	304-926-0499 x1525	lewis.a.halstead@wv.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010, Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
Lois Uranowski	OSM	Chief, Branch of Ecological Services and Technology Transfer	412 937 2805	luranowski@osmre.gov	Chapter 2, 10/01/10, Chapter 3, 10/25/10, Chapter 4, 01/13/11
Lukas Monette	OSM	Remote Sensing Specialist	412-937-2864	lmonette@osmre.gov	Chapter 3 Resubmit Oct 26, 2010, Chapter 3 Oct 25, 2010, Chapter 4 Jan 13, 2011

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Mary Katherine Ishee	OSM	Senior Advisor to the Director	202-208-2743	mishee@osmre.gov	Chapters 1, 2, 3 and 4, February 2, 2011
Michael Bower	OSM	Program Specialist	412-937-2857	mbower@osmre.gov	Chapter 3, October 25, 2010
Michael K. Robinson	OSM	Supervisory Physical Scientist	412-937-2882	mrobinson@osmre.gov	Chapter I, 10/7/2010, Chapter III (Part 1 of 6) 10/25/2010
Mike Richmond	OSM	Civil Engineer	(304)347-7162 ext 3046	mrichmond@osmre.gov	Chapter 3, 10/25/10, Chapter 4, 1/14/11
Mychal Yellowman	OSM	Civil Engineer	303-293-5049	myellowman@osmre.gov	Chapter 2, October 5, 2010, Chapter 3, October 25, 2010, Chapter 4, January 13, 2011
Nicholas Grant	OSM	Natural Resource Specialist	618-463-6463 x 5148	ngrant@osmre.gov	Chapter 3, October 25, 2010, Chapter 2, November 16, 2010, Chapter 4, January 13, 2011

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Paul Clark	OSM	Hydrologist	303-293-5065	pclark@osmre.gov	Chapter 1, October 5, 2010, Chapter 2, October 12, 2010, Chapter 2, November 16, 2010 (revised), Chapter 3, October 25, 2010, Chapter 4, January 24, 2011, Chapters 1-3, January 24, 2011 (revised)
Paul Ehret	OSM	Chief, Technical Services Branch	618-463-6463 ex 5129	pehret@osmre.gov	Draft Chapter 1 – 9/15/2010, Draft Chapter 2 – 10/5/2010, Draft Chapter 3 – 10/25/2010, Draft Chapter 4 – 1/10/2011
Paul Rothman	Kentucky DNR	Environmental Scientist	502-564-6940 x416	paul.rothman@ky.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010, Draft Chapter 4 – email notice of SharePoint posting 1/10/2011

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Peter Brinton	State of Utah	Environmental Scientist	801-538-5258	peterbrinton@utah.gov	Chapter 1, October 5, 2010; Chapter 2, October 5, 2010; Chapter 3 (partial initial), October 25, 2010, Chapter 3 (partial corrected), October 26, 2010, Chapter 3 (3.19 - Socioeconomics), October 28, 2010, Chapter 3 (3.6 - Surface Water), November 2, 2010, Chapter 4, January 13, 2011
Peter Michael	OSM	Geologist	412-937-2867	pmichael@osmre.gov	Chapter 3, October 22, 2010, Chapter 4, January 23, 2011
Randall C. Johnson	Alabama Surface Mining Commission	Director	205-221-4130	randy.johnson@asmc.alabama.gov	Chapters 1 & 2, October 5, 2010, Chapter 3, October 25, 26 2010, Chapter 4, January 13, 2011
Rebecca O. Hatmaker	OSM	Biological Scientist	865-545-4103, ext. 148	bhatmaker@osmre.gov	Chapter 3, October 22, 2010 Chapter 4, January 12, 2011
Richard Wahrer	Kentucky DNR	Environmental Scientist	502-564-6940 x417	richard.wahrer@ky.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/28/2010 & 11/2/2010, Draft Chapter 4 – email notice of SharePoint posting 1/13/2011

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Robert Postle	OSM	Manager	303-293-5041	bpostle@osmre.gov	Draft Chapter 2, October 5, 2010, Draft Chapter 3, October 25, 2010, Draft Chapter 4, January 12, 2011
Russ Hunter	State of West Virginia	Manager	304-926-0499 x1537	Russ.M.Hunter@wv.gov	Draft Chapter 1 – emailed 10/5/2010, Draft Chapter 2 – emailed 10/5/2010, Draft Chapter 3 – emailed 10/25/2010, Draft Chapter 4 – email notice of SharePoint posting 1/10/2011
Scott Kocher					
Stefanie Self	OSM	Civil Engineer	412-937-2105	sself@osmre.gov	Chapter 3, October 25, 2010, Chapter 4, January 13, 2011
Stephanie Reed	Railroad Commission of Texas, Surface Mining and Reclamation Division	Manager, Applications and Permits Section, Surface Mining and Reclamation Division	512-463-7243	Stephanie.reed@rrc.state.tx.us	Chapter 2, October 5, 2010, Chapter 1, October 5, 2010, Chapter 3, October 25, 2010, Chapter 3.19, October 28, 2010, Chapter 4 Table of Contents, October 28, 2010, Chapter 4, January 13, 2011

NAME	ORGANIZATION	TITLE	TELEPHONE NUMBER	MAILING INFORMATION	DATE RECEIVED
Stephanie Varvell	OSM	Senior Program Analyst	859-260-3920	svarvell@osmre.gov	Ch. 1, 8/11/10, Ch. 2: 10/4/10, Ch. 3, Table of Contents 8/24/10, Draft Outline, 9/24/10, Draft 10/25/10, Ch. 4, Table of Contents 8/24/10, Draft Outline 11/16/10, Draft 1/12/11
Sterling Rideout	OSM	Assistant Director	202-208-2596	srideout@osmre.gov	Chapter 2, 10/01/10, Chapter 3, 10/25/10, Chapter 4, 01/13/11
Steve Barclay	Office of the Solicitor	Attorney-Advisor	412-937-4007	steve.barclay@sol.doi.gov	Chapter 2:1/19/11, 10/21/10, Chapter 4: 1/14/11, Chapter 3: 1/11/11, 11/2/10, 10/26/10, 10/25/10, Chapter 1: 10/21/10
Terri L. Debin	Office of the Solicitor	Assistant Regional Solicitor, Land & Minerals	303-231-5353 ext. 335	Terri.Debin@sol.doi.gov	Chapter 4, January 18, 2011, Chapter 2, January 20, 2011
Thomas A. Bovard	Office of the Solicitor	Assistant Solicitor, BSM/DMR	202-208-5730	Tom.Bovard@sol.doi.gov	Chapter 1, August 11, 2010, Chapter 2, October 5, 2010, Chapter 3, October 25 and 26, 2010; Section 3.6 on November 2, 2010, Chapter 4, January 12, 2011, Draft PDEIS – February 25, 2011

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William L. Joseph	OSM	Chief, Program Support Division	618-463-6463 x5106	bjoseph@osmre.gov	Chapter 1, October 5, 2010, Chapter 2, October 5, 2010, Chapter 3, October 25, 2010, Chapter 4, January 13, 2011