

Documents responsive to the April 1, 2011, request from Chairman Hastings for documents related to the Office of Surface Mining Stream Protection Rulemaking

Volume: 00027094_Hastings_005

	Document Name	Pages	Document Date	Document Type	Document Title	Request1
1	OSM-WDC-B05-00001-000009	22	20101101	EML	Utah's comments on EIS Chapter 3 (John Craynon)	<input checked="" type="checkbox"/>
2	OSM-WDC-B05-00001-000013	3	20101101	EML	Chapter 3 comments - (John Craynon) from Dave Clark	<input checked="" type="checkbox"/>
3	OSM-WDC-B05-00001-000015	6	20101101	EML	Review of Draft Chapter 3 - SMRD comments (John Craynon) - from TX	<input checked="" type="checkbox"/>
4	OSM-WDC-B05-00001-000026	5	20101101	EML	Indiana, Chapter 3 SPR EIS (John Craynon)	<input checked="" type="checkbox"/>
5	OSM-WDC-B05-00001-000069	6	20101101	EML	EIS Comments Chapter 3 by KY (John Craynon)	<input checked="" type="checkbox"/>
6	OSM-WDC-B05-00001-000082	6	20101130	EML	Cooperating States' letter to OSM Director	<input checked="" type="checkbox"/>
7	OSM-WDC-B05-00001-000092	6	20101102	EML	Texas comments on Draft EIS Ch. 3	<input checked="" type="checkbox"/>
8	OSM-WDC-B05-00001-000111	1	20110215	EML	From: Jose Sosa meeting this week	<input checked="" type="checkbox"/>
9	OSM-WDC-B05-00001-000186	1	20101012	EML	Pizarchik Utah's comments Chapter 2	<input checked="" type="checkbox"/>
10	OSM-WDC-B05-00001-000210	4	20101012	EML	Craynon Transmittal Dave Clark comments SPREIS Chap. 2	<input checked="" type="checkbox"/>
11	OSM-WDC-B05-00001-000211	6	20101012	EML	Craynon transmittal Kentucky's comments Chapter 2 SPEIS	<input checked="" type="checkbox"/>
12	OSM-WDC-B05-00001-000252	4	20101116	EML	Draft EIS Review, Chapter 3, Section 3.6 (Paul Ehret)	<input checked="" type="checkbox"/>
13	OSM-WDC-B05-00001-000255	5	20101115	EML	EIS comments: Chapter 3.6 Surface Water (John Craynon) -KY comments	<input checked="" type="checkbox"/>
14	OSM-WDC-B05-00001-000282	6	20101203	EML	Greg Conrad EIS matters (Cooperating States)	<input checked="" type="checkbox"/>
15	OSM-WDC-B05-00001-000294	1	20101006	EML	Coker OSM SPR EIS Chapter II no comment state WY	<input checked="" type="checkbox"/>

	Document Name	Pages	Document Date	Document Type	Document Title	Request1
16	OSM-WDC-B06-00001-000017	8	20110126	ANL	Railroad Commission of TX, Surface Mining and Reclamation Division Ch. 4 of the Draft EIS Comments	<input checked="" type="checkbox"/>
17	OSM-WDC-B07-00001-000006	5	20110126	EML	Kathy Ogle Wyoming's comments on Chapter 4	<input checked="" type="checkbox"/>
18	OSM-WDC-B10-00001-000002	5	20101109	EML	Virginia Comments on Section 3.6 of the Draft EIS	<input checked="" type="checkbox"/>
19	OSM-WDC-B10-00001-000003	30	20101012	EML	Dana Dean Utah's Comments Chapter 2	<input checked="" type="checkbox"/>
20	OSM-WDC-B11-00001-000038	6	20101123	EML	IMCC Letter to the OSM Director Re: Draft EIS Process	<input checked="" type="checkbox"/>
21	OSM-WDC-B11-00003-000019	13	XXXXXXXXXX	OTH	Utah comments on ch.4 of the draft EIS	<input checked="" type="checkbox"/>
22	OSM-WDC-B11-00003-000022	4	XXXXXXXXXX	OTH	Ethel R. Eaton (VA) comments on ch.4 of the draft EIS	<input checked="" type="checkbox"/>
23	OSM-WDC-B11-00003-000023	6	XXXXXXXXXX	OTH	Richard Wahrer and Paul Rothman (KY) comments on ch. 4 of the draft EIS	<input checked="" type="checkbox"/>
24	OSM-WDC-B13-00001-000002	9	20110228	EML	WGA Weighs In	<input checked="" type="checkbox"/>
25	OSM-WDC-B13-00001-000003	4	20110223	EML	WGA/WAFWA Documents to Include In Secretary's Briefing Materials	<input checked="" type="checkbox"/>
26	OSM-WDC-B13-00001-000005	17	20101012	EML	Utah's Comments - Chapter 2	<input checked="" type="checkbox"/>
27	OSM-WDC-B13-00001-000014	6	20101123	EML	Letter Re: Draft EIS Process	<input checked="" type="checkbox"/>
28	OSM-WDC-B13-00001-000027	9	20110228	EML	Fw: Western Governors Association Letter	<input checked="" type="checkbox"/>
29	OSM-WDC-B13-00001-000028	9	20110127	EML	Fw: This Just Forwarded to Me	<input checked="" type="checkbox"/>
30	OSM-WDC-B13-00001-000036	6	20101222	EML	Fw: Letter from Seven State Cooperating Agencies	<input checked="" type="checkbox"/>
31	OSM-WDC-B13-00001-000047	2	20101025	EML	EIS Contract Weekly Report	<input checked="" type="checkbox"/>
Total Pages:		221				

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

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

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

Mr. Craynon:

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

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

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

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

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

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

Thank you,

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

(801) 538-5320
danadean@utah.gov

Comment Form

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

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

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			<p>of Utah. With SMCRA permitting in mind, the general coal mining areas in Utah were defined and analyzed in three USGS water resources investigative reports that provide defined geographical boundaries conducive to additional resource analysis. The two areas of concern are covered in two of these reports and a third geologic assessment report:</p> <ul style="list-style-type: none"> - Hydrology of Area 56, Northern Great Plains and Rocky Mountain Coal Provinces, Utah (Open-File Report 83-38) - Hydrology of Area 57, Northern Great Plains and Rocky Mountain Coal Provinces, Utah and Arizona (Open-File Report 84-068) - Geologic Assessment of Coal in the Colorado Plateau: Arizona, Colorado, New Mexico, and Utah (Kirschbaum, Roberts, and Biewick, 2000) <p>A third general concern is the relative lack of detail given to coal resources in the Colorado Plateau, so much of which are federally-owned, and which the federal government relies on for revenue. The Bureau of Land Management would be a good resource to consult with about many of the resources evaluated in the EIS.</p>		
General Comments			<p>Uniformity of structure and naming still needs work. For example, some sections have a explicitly named and numbered "0" section (often either "Background" or "Introduction"), but sometimes it is unnumbered and unnamed.</p> <p>Additionally, subsections are sometimes named "Colorado Plateau", "Colorado Plateau Region", and "Colorado Plateau Basin". Where possible, consistency (one name) is preferable.</p>		
3.0.2	3-2	14	"...see Section 3.1 for a detailed description..."		
3.0.2	3-2; 3-3	29-30; 5-6	The "vast majority" statement (lines 29-30) conflicts with coal production data shown in Table 3.1-28 on page 3-55. The tabulated Colorado Plateau production data indicate that most of the produced coal in this region is <u>underground</u> coal. The "vast majority of coal [being surface mined]" statement better		

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			describes the Northern Rocky Mountain Region (page 3-3, lines 5-6), based on that area's production shown in table (and visa versa) The vast majority of coal mined in Utah historically has been by underground methods, although surface mining has and will occur (one permitted surface mine is about to begin production).		
3.0.2	3-2 to 3-3		General – A figure is needed which clearly shows the seven coal mining regions. Figure 3.1-1 could be adapted by adding lines and labels denoting the limits of the seven coal mining regions.		
3.0.2	3-4	2	Utah currently has 3 counties with active mining operations (Emery, Carbon, and Sevier). A list of the counties analyzed should probably be included as an appendix.		
3.0.2	3-4	4-5	Like Montana, Utah has an additional county (Kane County in southern Utah) where surface coal mining will occur in the near future that is not included within the present scope of the EIS. It is a large county with no previous SMCRA permitted mines, and should be considered in this EIS.		
3.1.1.3	3-8	25	BLM-Utah reported a maximum depth of 2800 – 3000 ft. at the Utah Coal Symposium at the Western Energy Training Center, Helper UT (10/27/2010.), although limited coal mining deeper than 3000 feet has occurred in Utah.		
3.1.1.3	3-8	30-31	"...very thick coal bed with a shallow depth would be more economical to mine than a very thin shallow coal bed with a greater depth."		
3.1.1.3	3-9	18-19	Consider both sides of technology. Technological developments expand resources; restrictions limit them. The development of the longwall is one obvious example of technology that expanded reserves dramatically in underground mining because it increased recovery. Suggested modification: "Technological Restrictions: In addition, technological restrictions <u>and developments</u> <u>also either limit or expand</u> resource recovery, primarily in relation to underground mining."		
3.1.1.3	3-9	32-33	"Inclusion of dilution and partings material lowers is low in Btus/lb and thus decreases the quality of the mined coal."		
3.1.1.3	3-9	footnote 3	"These include ... National Forests, ..." This is unclear; coal mining is generally <u>not</u> excluded on National Forest lands.		

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3.1.1.5	3-10	10	"the DBR DRB to measure..."		
3.1.2	3-14	8-9	"Of the estimated demonstrated coal reserves in the of U.S., approximately 68%, is are mineable by underground methods, while the remaining 32% are mineable by surface methods." Also, "estimated demonstrated" sounds contradictory.		
3.1.3.1	3-15	Fig 3.1-8	The different types of underground mining are not, but should be, specified. The legend for this bar graph (only one entry – orange) does not correspond to the bar colors in the graph (blue and red). Also, this figure should be updated to agree with and present each of the 7 coal producing regions described in this chapter. The graph also needs a label for the y-axis.		
3.1.3.1	3-16	Fig 3.1-9	Figure title should be "Typical Cross Section", not "Type Cross Section"		
3.1.3.3	3-20		1 st paragraph 1 st sentence: "...which are explained in detail below."		
3.1.3.4	3-21	15	Coal doesn't always need to be blasted. Clarify this: "The cut coal face <u>may be blasted if necessary</u> to free the coal..."		
3.1.3.8	3-26	4	Add the following sentence: "Subsidence can also affect the hydrologic balance above and adjacent to mined areas by altering surface water and groundwater conditions." In the western states, potential impacts to hydrologic features (like springs) from subsidence are of significant concern.		
3.1.5	3-28	8-13	The requirement to achieve approximate AOC is not unique to surface mining. Achieving approximate AOC is also required for reclamation of underground mines.		
3.1.6	3-39		Last sentence: "...and are explained in detail below."		
3.1.7.6	3-43	30	..." (redistribution of the spoil from form one part of the fill to another..."		
3.1.7.6	3-43	34	"(e.g. not more that than one bench on the fill face)"		
3.1.7.6	3-44	29	"...(8) additional studies of completed fills; and, [no comma]..."		
3.1.7.7	3-46 to -47		The subsection titled "3.1.7.7 Mine Reclamation" seems out of place within Section 3.1.7 Excess Spoil.		
3.1.7.7	3-46	4	"Mine reclamation is the process of backfilling, regarding <u>regrading and planting vegetation on a disturbed</u> "		
3.1.8	3-50	24	"Phase 1 bond releases are granted after satisfactory backfilling and regarding <u>regrading</u> have been completed on		

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			the disturbed area.”		
3.1.8	3-53	2	UDOGM has interpreted the revegetation success rules as requiring less time to achieve bond release in the case of industrial/commercial post mining land use. i.e. For industrial uses within 2 years of grading, vegetation success equals the vegetation cover necessary to control erosion.		
3.1.9	3-53 thru 3-74	Starting with 20	<p>The content of this section does not reflect its title “Mineral Resources and Mining by Region”, as it infers both minerals and mining operations other than coal. Unless non-coal minerals were previously determined to be insignificant or unimpacted by the proposed rulemaking, other mineral resources should be discussed to some degree under this section, particularly considering federal mineral interests in western states.</p> <p>Oil, natural gas, and coalbed methane resources are usually more closely tied to coal geology than other mineral resources. In federal lands in Utah, coal and oil and gas resources often overlap, and unless previously determined to be insignificant, should (at least) be considered for evaluation with the other resources, since they have significant economic value. In Utah and other western states, the Bureau of Land Management would be a good source for this type of information.</p>		
3.1.9	3-54	1	The pie chart showing production by region is very helpful. This would be a logical place to show a similar pie chart documenting reserves by region.		
3.1.9	3-55	5 (Fig 3.1-29)	The legend for this figure is incomplete - Appalachian Basin and Colorado Plateau labels are missing.		
3.1.9.1.4	3-57; 3-58	31-37; 1-10	Include recovery % as in the Extraction Method section for the Colorado Plateau		
3.1.9.1.6	3-59	7	<p>The use of the term utilization can be confusing. “The mines of the [Appalachian] region utilized 79% of underground production and 74% of surface production for a total utilization of 77% of the resource. (p. 3-59)”</p> <p>Is the statement about the Appalachian mines a reference to utilization of production capacity? If so, the mines themselves don't utilize the coal - they produce it. The public uses the coal.</p>		

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3.1.9.2	3-59	14	Replace "The Colorado Plateau is located in the Four Corners region of Colorado, Utah, New Mexico, and Arizona" with "The Colorado Plateau coal region comprises coal reserves in Colorado, Utah, New Mexico, and Arizona". The "Four Corners Region" generally refers to the area surrounding the four corners and does not describe the entire four-state area.		
3.1.9.2.1	3-60	Fig 3.1-32	<p>Add a legend to the figure identifying what the colored areas denote. If they represent reserves, it is not accurate, as coal reserves currently being mined in the Book Cliffs (located east of the San Rafael Swell are not shown at all. The Wasatch Plateau Coal Field is much more extensive than shown in the figure, extending east and north from the area shown. The Alton Coal Field with a soon-to-be permitted mine is also not shown. Since mines in these areas will fall under SMCRA rules, these areas should be evaluated.</p> <p>Also, although it is a large coal resource conducive to underground mining, much of the Kaiparowits Plateau is not typically included in reserve assessments because of National Monument status.</p> <p>The states also need to be labeled, and the shape of the states should be corrected.</p>		
3.1.9.2.1	3-60	4	"The coal-bearing regions in the Colorado Plateau are predominantly located in eastern western Colorado,"		
3.1.9.2.1	3-60	5-6	<p>Correction: "<u>some of the significant coal beds fields in the region include the Wasatch Plateau, Book Cliffs, Alton, and Kaiparowits Plateau in Utah, the San Juan Basin...</u>"</p> <p>Explanation: Figure 3.1-32 inaccurately shows the Wasatch and Kaiparowits Plateaus as being the only coal-bearing areas in Utah. Kaiparowits coal is not accessible to mine because it is within the boundaries of Escalante National Monument. The Book Cliffs is also a coal producing area, as well as the Alton-Kolob Coal fields, along with the Wasatch Plateau, all have permitted mines. These coal fields are not the only coal fields in Utah, and none of them should be categorized with Colorado coal fields, since there are distinct geologic boundaries between the two.</p>		

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			Coal mining in other fields (e.g. Henry Mountains) in Utah is also foreseen after the more-readily mineable Utah coal reserves are mined. Also, at least for Utah, the equivilation of "coal beds" with two "plateau" is awkward, since coal beds, while located in the plateau and in the plateau's coal field, are not the plateaus themselves. Using the term "coal fields" is probably more accurate than "coal beds" in Utah. The use of "coal beds" for coal in other Colorado Plateau states might be acceptable.		
3.1.9.2.1	3-60	17-18	This is just one example of many found throughout the EIS; tonnage should be described consistently, either as 'million short tons' or 'thousands of short tons', rather than mixing the two, especially in the same sentence. "In 1997, about 30 percent (330 million short tons) of coal mined in the United States came from Federal lands, 52,180 thousands of short tons of which came from the Colorado Plateau region,..."		
3.1.9.2.2	3-60	18	Not very clear: " 52,180 thousands of short tons of which 52.18 million short tons came from the Colorado Plateau region,		
3.1.9.2.6	3-61	22	General: Suggested source of coal production/reserves etc. data for the State of Utah can be found at: http://geology.utah.gov/emp/energydata/coaldata.htm		
3.1.9.2.6	3-62	Figure 3.1-33	Include units of production in figure title or on Y axis.		
3.1.9.3.1	3-63	Figure 3.1-34	Incomplete legend. i.e. what does black color represent?		
3.1.9.4.1	3-66	Figure 3.1-36	Legend?		
3.1.9.5.5	3-70	29	"These 14 mines produced 70% of the coal in the entire nation in 2008." Figure 3.1-6 shows less than 50% comes from the entire Northern Rocky Mountain Region.		
3.1.9.7.4	3-73	18	"Mining methods in the Western Interior Region includes include both area surface mining and"		
3.1.9.7.5	3-74	5-6	"Mine Size The Other Western Interior Region consisted of 12 surface mines with 220 total employees and 2 surface underground? mines with 140 total employees in 2008."		
3.2	3-2	7-8	"Some of the coal regions encompass large areas requiring some geological descriptions to be generalized (see Figure		

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			<p>3.2-1)." In the State of Utah, at least, greater (and sometimes more accurate) detail is needed than is presently provided under the Colorado Plateau coal geology section (see notes in section 3.2.1.3.3).</p> <p>Consider using the USGS-designated hydrology areas 56 and 57 to accurately portray resources in the areas potentially affected by coal mining since previous boundaries in the scope of this EIS provide inaccurate analysis of resources possibly affected by coal mining.</p>		
3.2.2			General – The section heading numbers for this section are fouled. This section would logically be numbered 3.2.2 (not 3.3.2) and subsections would be 3.2.2.1, 3.2.2.2, etc. (not 3.2.1.3, 3.2.1.4, etc.)		
3.3.2 (should be 3.2.2)		Figure 3.2-4	Figure should match description		
3.3.2 (should be 3.2.2)	3-11	19	"coal fields including the Unita Uinta Region, Tongue Mesa Field, Canon City Field, Henry Mountains" Common spelling error that Spell Checkers won't catch, and if set for Auto-Correct, they will replace the correct spelling with the incorrect version.		
3.3.2 (should be 3.2.2)	3-11	20	Several smaller coal fields in Utah are inappropriately lumped together with the "Uinta Coal Basin". The Book Cliffs Coal Field has active coal mining. The Southwestern coal field known as the Alton-Kolob Coal field should be included since a new surface mine was recently permitted here.		
3.3.2 (should be 3.2.2)	3-12	2-6	Figure 3.2-4 is misplaced below the Colorado Plateau header		
3.2.1.3.3 (should be 3.2.2.1.3)	3-14	6-22	<p>The text for this section of the EIS in its entirety was taken from an EPA coalbed methane paper, and contains inherent errors as a result when applied to coal mining. The map associated with this inappropriate description in the original source is also incompatible with the maps generated for this EIS. Hence the incorrect word description.</p> <p>For a more accurate map of coal resources and reserves, please see the 2000 USGS report entitled "Geologic Assessment of Coal in the Colorado Plateau: Arizona, Colorado, New Mexico, and Utah" (Professional Paper 1625-</p>		

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			<p>B).</p> <p>The statement that "a very small portion of the basin is in northwestern Colorado" is incorrect, and is a good example of how this description of the Uinta Basin is inadequate for purposes of coal reserves and mining.</p> <p>In Utah, most of the coal mining takes place on the far west end of what is called the "Uinta Coal Basin."</p>		
3.2.1.3.3	3-14	15-17	These two depth estimates are close on the shallow number but not on the deep one. This is likely due to the source – a coalbed methane appendix.		
3.2.1.3.3	3-14		A discussion of the geology of the Southwestern Utah Region (Kaiparowits Plateau) is necessary: the Utah program recently approved a plan for a surface mine in this region and anticipates an application to substantially expand that mine.		
3.2.1.3.3	3-14	20-21	The term "targeted" is incorrect when applied to coal mining. It was taken from a source used in describing coalbed methane production, not coal mining. In Utah and very possibly worldwide, coal mining has occurred at a maximum depth of just over 3,000 ft.		
3.2.3	3-23	4 - 6	<p>The description and map showing the Northern Rocky Mountains and Great Plains Region in Section 3.2.3 does not agree with the description and map in Section 3.1.9.5.1. Are Utah, Idaho, and New Mexico part of the Northern Rocky Mountains / Great Plains Region or in the Colorado Plateau Region?</p> <p>If the Figure 3.2-11 is correct, then replace text with: "The Northern Rocky Mountains and Great Plains Region encompasses the coal-bearing areas of the states of Idaho, Montana, North Dakota, South Dakota, and Wyoming and selected coal-bearing areas in Colorado, New Mexico, and Utah. This region is subdivided into many basins, regions or fields (see Figure 3.2-11)."</p>		
3.3.2	3-41	2, and 6	Spelling correction, "Mollisols"		

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3.3.2	3-41	2	Include Alfisols in this list.		
3.3.2	3-41	7	Mollisols predominant on high country plateaus and ridge tops.		
3.3.2	3-41	7	Alfisols predominant in forested high country.		
3.3.2	3-41	13	Generally formed in colluvium, not alluvium.		
3.3.2	3-41	18	Ecological areas should include Great Basin and Range, High Desert. I think Section 3.12.2, Figure 3.12-3 and Table 3.12-5 present the ecological areas in more familiar terms that could be used in this section as well.		
3.3.2	3-41	18-40	Seven ecological areas are listed, but the subsequent discussion does not cover the same seven ecological areas. I.e. North Central Highland is identified in the topic paragraph, but South Central Highland areas are discussed in paragraphs below. White Mountains are not identified as an ecological area, but are discussed. Range and High Desert ecological area important to Utah.		
Table 3.3-2	3-42		Relevance of this table is questionable. Tavaputs Plateau is missing a percentage. Total percentage should add up to 100%.		
3.3.2.1	3-43	9	Any reclaimed acreage in New Mexico?		
3.3.2.1	3-43	9-11	The source of these numbers should be included, but our records for overall total reclaimed and overall total disturbed acres are very similar to yours.		
3.3.2.1	3-43	15	Disagree with this statement. Revegetation with native species can be achieved within the bond release period of 10 years. Establishment of cryptogams may require 20 years.		
3.3.2.1	3-43	16	Primary reason for low reclamation potential is lack of precipitation during growing season.		
3.4.0.1	3-53	25	"The model accurately predicted over 90 percent of the perennial streams"		
3.4.0.1	3-54	Table 3.4-2	'NHD' needs to be defined or identified (it is in Table 3.4-11 on p. 3-87).		
3.4.0.2.2	3-60	3-4	Double-check the source for this definition. "With regards to perennial streams, these systems were defined to have flow for most to all of the year with a streambed above below the water table."		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.4.0.3.1	3-63	26	What's an RBP? "...maintaining the basic concept of the RBP." OK, I see; it's defined in line 29 – should be up in line 26.		
3.4.0.3.1.5	3-72	38	Typo... "large" woody material		
3.4.0.5.1.6	3-84	25	e.g. forested wetland or low precipitation areas in the Western U.S.		
3.4.0.5.1.6	3-84	26	Correct typo 'is' should be "in."		
3.4.2	3-91		Only stream characteristics typical to New Mexico are discussed. Include some research conducted on stream types in Utah and Colorado.		
3.4.2	3-91	2 – 4	<p>The description of the "Colorado Plateau" does not agree with the description of the "Colorado Plateau Coal Region" included in other sections of the document. Inconsistent introductory sections within the Chapter 2 sections dealing with the Colorado Plateau Coal Region are confusing for readers. The term "Colorado Plateau Coal Region" should be used exclusively in this Chapter to avoid confusion with the Colorado Plateau physiographic province.</p> <p>A map is necessary to show the relationship of the Navajo Canyonlands, Tavaputs Plateau, White Mountain-San Francisco Peaks-Mogollon Rim, South-Central Highlands, North-Central Highlands and Rocky Mountains, and Green River Basin relative to the coal resources of the Colorado Plateau Coal Region. These sub-classifications should be referenced or explained – are these subdivisions based on geology, ecology, or hydrology?</p>		
3.4.2			No information is provided for Utah or Arizona in this section. Consider using the USGS-designated hydrology areas 56 and 57 to accurately portray resources in the areas potentially affected by coal mining since previous boundaries in the scope of this EIS provide inaccurate analysis of resources possibly affected by coal mining.		
3.4.2.2?	3-94	5-6	Should this be Table 3.4-18? "Table 3.4-16 lists regional hydraulic geometry relationship curves for the Colorado Plateau Region."		
3.5.1.2	3-5	8-13	'Is' or 'Are'? 'Sufficient' or 'sufficiently'? "Mountain-top removal or Area mining methods would be		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			considered in both steep slope and median sloped areas if the coal seam depth is economical and there is <u>are sufficient</u> efficiently contiguous coal reserves to warrant substantial capital investment. Underground mining methods would be considered when surface mining is uneconomical due to excessive coal seam depth, if property (mineral) rights have issues, and there <u>are sufficient</u> contiguous coal reserves to warrant substantial capital investment.”		
3.5.1.3.1	3-5	17-18	“SMCRA regulations require that all highwalls will be <u>are</u> eliminated and that spoil material <u>will be</u> placed on the mine bench in a configuration that adheres to AOC...”		
3.5.1.3.3.2	3-6	24-26	Sentence revision needed: suggestion. “With proper placement and compaction of <u>excess spoil material from mining operations</u> , [comma] the old mine benches could be restored to AOC and <u>also minimize the</u> number and size of valley fills <u>minimized</u> . to accommodate the excess spoil material from mining operations” ”		
3.5.1.3.5	3-8	24-25	“The policies also define how much higher the deck of a valley fill must be raised above the elevation of the lowest seam mined.” To someone unfamiliar with valley fills, an illustration would probably be a big help.		
3.5.2.2			Add the following: Surface facilities for most underground coal mines in Utah are located in deeply incised canyons.		
3.5.2.3.1			Add the following: In Utah, restoration to AOC is a requirement for both surface and underground coal mines. For underground mines, restoration of AOC typically includes backfilling to eliminate highwalls developed at surface entries.		
3.5.2.3.3			Add the following: Several coal slurry impoundments have been developed at underground mines in Utah. These slurry cells are being re-mined as waste fuel.		
3.7	3-21 and 3-22	33 and 1	“About <u>67 percent</u> of fresh groundwater withdrawals in 2005 were for irrigation, and <u>18 percent</u> were for public supply. More than half of fresh groundwater withdrawals in the United States in 2005 occurred in <u>six States</u> . In California, Texas, Nebraska, Arkansas, and Idaho, most of the fresh groundwater withdrawals were for irrigation..” Questions: What about the other 15 percent? Which six states? Are they coal producers? Are the five listed included in the six?		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.7.1.1.3	3-27	11	Extraneous 'g' "... 600 feet and g the Berea locally exceeds 100 feet."		
3.7.2	3-38		<p>The major aquifer systems described in this section are mostly not applicable to permitting hydrology and the effects of coal mining in Utah because of the geologically-inaccurate grouping of Utah's active coal mining areas with those of Colorado.</p> <p>Consider using the USGS-designated hydrology areas 56 and 57 to accurately portray resources in the areas potentially affected by coal mining since previous boundaries in the scope of this EIS provide inaccurate analysis of resources possibly affected by coal mining.</p> <p>It is critical that this section identify that local (perched) groundwater flow systems as part of the affected environment. The following text should be added to this section:</p> <p>"In the more mountainous areas of the Colorado Plateau Coal Region, much of the alluvium in the stream valleys is too thin, narrow, and discontinuous to be considered a major aquifer, even though some of the larger of the mountain alluvial deposits, such as those near the Sevier River in central Utah and in the Uinta Basin of northeastern Utah, contain locally important surficial aquifers (USGS Ground Water Atlas HA-730C). Groundwater springs are an important source of water supply in Utah's coal resource areas. Springs are used for public water supplies and irrigation; provide water for livestock and wildlife; and provide the major source of baseflow to perennial streams (USGS Water Resources INvestigation Open-File Report 83-38). Although not part of of the major aquifer systems described later in this section, springs in mountain areas of Utah are a vulnerable and carefully protected resource."</p>		
3.7.2.1	3-42	Fig 3.7-2	Coal reserves of the Colorado Plateau Coal Region should be shown in this figure, overlain on the aquifers. The major regional aquifers (Mesaverde, Uinta-Animas, Dakota-Glen Canyon, Coconino-De Chelly) should be clearly identified and labeled individually on the map. The map title should be changed to "Primary Regional Aquifer Systems of the		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			Colorado Plateau Coal Region".		
3.7.2.1.3	3-42		No mention of the over-appropriation of ground water in the region.		
3.7.2.3.2	3-44	37	Extraneous 't' "... "In general, areas of the aquifer ‡ recharged by infiltration from precipitation..."		
Fig 3.7-5	3-72		The colors on this map need to cover a broader spectrum; it is very difficult to distinguish the different aquifers with the color scheme that has been used. Actually, this applies to all the aquifer maps.		
3.7.5.8.1	3-78	12-15	It isn't clear exactly which aquifers are constrained to Yellowstone. "The aquifers are mostly within the boundaries of Yellowstone National Park. Accordingly, the potential to develop these aquifers is lacking. "		
3.8.0.3	3-99 to - 100		The following should be added to the bulleted list of potential long term hydrologic impacts: <ul style="list-style-type: none"> • Alteration or loss of streams and springs due to subsidence from underground mining • Contamination of surface and groundwater by exposure to acid-forming and toxic materials 		
3.9	3-2	1 - 3	Suggest deleting "Radionuclide" from title and introduction to this section. Discussion of radionuclides does not appear warranted based on the information presented later in the section. Even "Chemical" in the title may be misleading, as suspended solids are described in this section and suspended solids are not considered a "chemical contaminant". Might portions of this section be better for an appendix?		
3.9.1	3-2	16	Add the following sentence: Similar processes also produce CMD from underground coal mining operations.		
3.9.1.1	3-3	5 - 6	Replace "particles" with "species" in the following sentence: In AMD, there are far more dissolved acidic particles [species] than alkaline particles [species].		
3.9.1.3	3-9	30	Wyoming workshops in 2004 resulted in regionally accepted overburden analysis and handling requirements to keep selenium enriched overburden out of surface and groundwater. Utah references this Wyoming document as Attachment 1 to the Utah Overburden and Topsoil Management Guidelines.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.9.1.5	3-13 to -14		Delete this section. The material presented in the radionuclide section does not provide any explanation or rationale for including radionuclide transport in this EIS. If consideration of radionuclides is mandatory as part of the EIS process, then this section should be reworked to state that data on radionuclides in coal is sparse, but the available data suggest that radionuclide content of coal is generally near background levels and that radionuclide transport will not be evaluated further in the EIS.		
Table 3.9-2	3-16	5	This table indicates "n/a" for Impaired stream miles in Utah due to underground mining. This table should more clearly be titled, "Impaired Perennial Stream Miles due to CMD." If this table relates all impaired stream miles, then the Utah row should account for approximately 1,500 ft. of impaired ephemeral drainage in Whiskey Creek, not due to CMD, and several miles of perennial Mud Creek that were entrenched due to extreme flows in 2002 from Skyline mine discharge.		
3.9.3	3-17	1-6	This section discusses impaired water bodies within the State of Utah. Data showing which water bodies impaired do not distinguish which water bodies were impaired due to coal mining or other mining activities. Furthermore, Figure 3.9-3 provided does not show these water bodies, or they are difficult to locate.		
3.9.3	1-6	3-17	General – perhaps a more general discussion on expected baseline/background surface water parameters listed in 3.9.1.2 would be more relevant.		
3.9.3	3-17		<p>What is the intention of this section? Does "Baseline" refer to pre-mining or pre-SPR EIS? An introductory section is needed. Groundwater quality was previously described in the groundwater section (Section 3.7) and it seems to follow that surface water quality will also be described in it's respective section (3.6, not yet provided).</p> <p>UDOGM recognizes that a detailed discussion of baseline conditions for each of the seven coal mining regions would be a tremendous undertaking and unachievable under the mandatory schedule of the SPR EIS process. Nonetheless, the Water Quality Baseline material presented in Section 3.9 fails to provide any information useful for describing the Affected Environment or for evaluating potential impacts of the</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>proposed alternatives. Specific to Section 3.9.3, the following information is lacking:</p> <ol style="list-style-type: none"> 1) Table 3.9-2 does not identify which water quality parameters are responsible for 303(d) listings. 2) Table 3.9-2 fails to provide any context – for example what percentage of stream miles are impacted? 3) Using 303(d) listings as criteria does not account for groundwater conditions. If groundwater is not to be evaluated, then the section should be re-titled as “Surface Water Quality Baseline” and an explanation should be provided why groundwater is not presented. 4) Using the 303(d) listing for presenting water quality baseline conditions establishes a binary condition for evaluating water quality – does it meet criteria or not. 		
Figure 3.9-3	3-18		This figure is not clear. Scofield Reservoir in Carbon County Utah should be shown as an impaired water body (not due to mining).		
3.10.0	3-18	31	Define BACT the first time it is used.		
3.10.2.1.4	3-35	1	Are National Monuments included in Class I areas?		
3.10.2.4	3-37	15	Noise is also associated with underground mining intake and exhaust fans.		
3.11.3	3-4	34	Delete “and”.		
3.11.3.1.2	3-6	13	Change “it underlain” to “is underlain”		
Table 3.11-2	3-14		There must be a small percentage of emergent herbaceous wetlands associated with the drainages in the mining regions of Utah. i.e. Sink Valley in the permit area of the newly-permitted Alton Mine in Kane County, Winter Quarters perennial stream in the vicinity of Skyline Mine surface disturbance, Price River runs through the Wellington Preparation Plant, Quitchupah Creek runs through the permit area of the Emery Mine, Crandall Creek runs through the Crandall Canyon Mine, Bear Canyon Creek runs through the Bear Canyon Mine disturbed area, etc.		
3.12.2.3.1	3-60	34	This sentence includes the unknown word, “manyse”. Could mean “many of these” but not sure.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.13.2.8	3-154	30-32	The Gunnison Sage Grouse (<i>Centrocercus minimus</i>) is also listed as a candidate species and located in the Colorado Plateau coal region.		
3.13.5.8	3-162	24	The Golden Eagle (<i>Aquila chrysaetos</i>) is not a federally listed species. If it is included in this analysis as a species protected under the MBTA, then it needs to be included in the Colorado Plateau region as well, where it has significant amount of habitat within coal producing areas.		
3.13.5.9	3-163	6	Delete "Listed". It is duplicated in the sentence.		
3.15.2	3-15	4	Reference to table is incorrect (should be 3.15-10 ?)		
3.15.2.4	3-19	11-12	<p>Although a large amount of coal deposits are in the Uinta basin, most of it is not considered minable, and very little has been developed for mining recently. (see 3.2.1.1)</p> <p>This affected environment analysis should consist of areas that will be developed for mining. The majority of coal mines in Utah do not lie in the Uinta or Vernal Basin. There are many oil and gas developments in this area, but zero coal mines. Coal mines are located within the bookcliffs which are south of the boundary for the unita basin according to the USGS.</p>		
3.15.2.4	3-19	19-20	Recreation areas mentioned in this section should include those that are located within or near coal producing regions, not Steinaker and red fleet. These recreation areas could be: Green River State Park, Scofield Reservoir state park, or the San Rafael Swell.		
3.15.2.4	3-19	11-20	<p>The recreation biography for the coal resource areas of Utah is incorrectly focused and mostly deficient. For example, the Uinta Mountains and Flaming Gorge lie significantly outside of the coal fields shown in Figure 3.15-4. A description of the recreation associated with the Wasatch Plateau and Book Cliffs and some of the southern Utah national parks and monuments (e.g. Bryce Canyon) would be more pertinent for Utah.</p> <p>The Bureau of Land Management would be able to effectively identify the recreational resources that exist in or significantly close to Region 2 coal field areas in Utah (and also in other</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			states like Colorado, NM, etc).		
3.16.1.2	3-52, 3-53	23-39, 1-36	This section should be moved from where it is in the Appalachian section to the preceding subsection (not numbered explicitly) under 3.16. It is pertinent to many of the coal basins, not just the Appalachian section.		
3.16.2.1	3-58, 3-59	27-39; 1-4	Some explanation is needed to explain how the resources listed in this section are or contain visual resources.		
3.16.2.2	3-59	6-40	This explanation of how visual resources are analyzed is good. It might be helpful to reference section 3.16.1.2, since the Colorado Plateau has so much BLM and Forest Service land.		
3.17.3			General – perform a global replacement to correct “Colorado Plateau Basin” to read “Colorado Plateau Coal Region”		
3.17.3.1	3-77, 3-78	10	This is an good table, but you need to include source (Table 3.17-5).		
3.17.3.1.3	3-79	36-40	A new mine (Coal Hollow) is being permitted in Kane County to the south, and will rely on road transport.		
3.18.0.3	3-98	21	Sentence does not make sense. Was the word ‘by’ left out? “...consultation is usually conducted (by) federal agencies as part of...”		
3.18.2.1.4	3-106	30-33	Fossils and a mammoth (Huntington) have been found in areas of Utah with coal resources, at very least in areas of the Wasatch Plateau.		
3.18.2.2	3-106	36	The phrase that resources “undoubtedly...may be encountered” seems contradictory. Traditional cultural resources unquestionably exist in the Colorado Plateau region. Stating that the resources exist logically infers that they may be “encountered” by actions associated with the Alternatives. If they are not defined as such yet, there are still existing resources that have been defined as such. This suggestion applies to a number of the summaries of resources for other coal producing regions as well. Findings from other NEPA documents in Region 2 would document the existence of these resources and what might be found. Consulting with the Bureau of Land Management about this and other resources in Region 2 would be helpful.		
3.18.2.2	3-107	3	The phrase “simple, not modified by human beings location” is confusing to read and has questionable grammar. Perhaps “simple location not modified by human beings”.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.18.2.2	3-107	14	"Cultural resources associated with this period may include"		
3.18.2.2	3-107	17	Change the word 'begins' to the word 'began'.		
3.18.2.2	3-107	26	"Some of the anticipated cultural resources associated with this period include..."		
3.18.2.2	3-107	42	"Some of the cultural resources expected to be associated with..."		
3.18.2.2	3-108	5-6	"Sites expected from this period may include..."		
3.18.2.2	3-108	9-10	"All manner of buildings associated with the history and prehistory of the area may be expected <u>are located</u> in the region."		
3.20	3-115	23	"Production was <u>can be</u> associated" Explanation: "was" refers to past tense and certain conditions of that past that should be stated. What is the present impact of "residential proximity to heavy coal production" on human health?		
3.20.1	3-117	19	explosions (plural)		
3.20.4	3-118	13	"blasting, drilling, cutting, <u>loading, hauling</u> and transporting coal" (Add loading and hauling if you want to be more specific)		
3.20.4	3-118	14	"More dust is generated with mechanized mining than with manual methods, and sSome" Explanation: Nearly all modern mining methods are mechanized.		
3.20.4	3-118	22	"Coal mine dust causes can cause" Explanation: If it's not inhaled, it won't cause a problem.		
3.20.4	3-118	25	"There are <u>can be</u> some rheumatoid-like reactions <u>with exposure to coal mine dust as well</u> "		
3.20.5	3-118	28	Incomplete sentence. Finish with "encounter" ?	2x	
3.20	3-119	23-32	Are all of these findings associated with the same source (Hendryx and Abern, 2008)? I assume so, but don't know for sure. The way it is written, it could be understood to reference just the last sentence of the paragraph. Consider placing the reference after the period.		
3.20	3-119	33-36	This paragraph shouldn't need a reference as it is. Stating in a sentence that this section draws on a particular reference would be more correct.		
3.20.4	3-122	3	The term "physical hazards" infers much more than health hazards of noise, vibration, heat, etc. Consider replacing with		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			"physical <u>health</u> hazards". Otherwise, rock falls, moving equipment, and other "physical hazards" might be inferred.		
3.20.5	3-118	28	Airborne dust that miners <u>breathe</u> .		
3.20.10	3-122	2	The principal safety hazard underground in the falling of the face...		
3.20.10	3-122	4	The top five most common accident reported by MSHA		
3.20.13	3-129	11	This statement as written is technically incorrect, since there are underground mines in Arizona (but they are not coal). We suggest the addition of specifying information (coal) in this case and in a number of other such cases found in this section. Three cases of an unknown number of cases are identified below. Suggestion: "There are no underground <u>coal</u> mines <u>currently in production</u> in Arizona."		
3.20.14	3-131	7	There are no active underground coal mines in this region.		
3.20.15	3-132	4	There is no active underground coal mining in the Gulf Region.		
3.20.24	3-138	6	There are no active underground coal mines in this region.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

From: [Craynon, John](#)
To: [Ehret, Paul](#); [Means, Brent P.](#); [Coker, Jeffrey A. "Jeff"](#); [Calle, Marcelo](#)
Subject: Fw: Chapter 3 comments
Date: Monday, November 01, 2010 1:23:21 PM
Attachments: [Dave Clark NM-MMD Comment form Chapter 3 10.29.2010.docx](#)

From: Clark, David, EMNRD [mailto:david.clark@state.nm.us]
Sent: Friday, October 29, 2010 11:54 AM
To: Craynon, John
Subject: Chapter 3 comments

Hi John,

My comments re Chapter 3 of the draft Stream Protection Rule EIS are attached.

Have a great weekend.

Dave Clark
NM-MMD

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Comment Form

Title of Document	CHAPTER 3 Affected Environment
Contact Information	
Name	David Clark – NM MMD
Telephone Number	505-476-3416
Email	david.clark@state.nm.us

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.1.5.5	3-34	Figure 3.1-21	Figure 3.1-21 looks like a bucket-wheel excavator to me		
3.1.5.7	3-37	29	"expedited" should be "expected"		
3.3.2.1	3-43	8,9	Acres reclaimed in NM? About 13,532 ac; I would say that "Approximately one-half of the disturbed acreage in New Mexico has been reclaimed."		
3.3.2.1	3-43	15	Five years would be much closer to the average length of time for revegetation establishment on New Mexico coal mine reclamation.		
3.5.0	3-3	TABLE 3.5-2	York Canyon Underground Mine had a coal slurry impoundment and two course refuse disposal areas, all of which have been reclaimed and released through Phase II. This mine is located in the Raton Basin of NM, not in the San Juan Basin. The latter basin is being emphasized for the EIS.		
3.5.2.3.3	3-13	19	See comment above. It would be more accurate to say that the San Juan Basin has no coal slurry impoundments, not New Mexico. Or that New Mexico has no active coal slurry impoundments.		
3.20.11	3-123	"TABLE 3.20-2"	Captioning problems start here: Figures 3.20-1 through 5 captioned as tables. This results in table captions being mis-numbered, starting with table 3.20-2, which is captioned 3.20-6, and continuing through the remainder of section 3.20.		

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

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

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

Regards,
Stephanie Reed

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

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

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

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

Comment Form

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

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

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.1.7.7 Mine Reclamation	3-46	13	The statement "almost all sites generate excess spoil that must be hauled to valley fills..." does not characterize surface mining operations which do not generate excess spoil, such as in the Gulf Coast region.		
3.1.7.7 Mine Reclamation	3-46	22, 29	The description of topsoil substitute (rock-based material broken up by passage of tracked equipment) appears to only characterize topsoil substitution in the eastern United States rather than other regions, where unconsolidated overburden material is used.		
3.1.9.3.2 Property Ownership	3-63	11	The statement that "about half of the Federal surface estate in the Gulf Coast Region is underlain by federally owned minerals" is not substantiated and appears incorrect.		
3.3.2 Colorado Plateau Region	3-12	Figure 3.2-4	The Appalician Basin Region Seismic Hazard Map appears to be incorrectly contained in this subsection.		
3.2.1.5 Depositional Setting	3-16	13	The coal bearing formation, Claiborne Group, is incorrectly referred to as the Clairborne Group.		
3.2.1.5.2 The Claiborne Group	3-18	31	Discussion in this subsection incorrectly indicates that active mining is occurring in this formation.		
3.2.5 Other Western Interior Region	3-32	5	Central Texas is now identified as being contained within the Other Western Interior Region, unlike discussions in other sections.		
3.3.3 Gulf Region	3-44		A dominant soil associations table has been provided for all regions but the Gulf Coast Region.		
3.4.0.1 Length (Perennial, Intermittent and Ephemeral)	3-54, 3-55	Table 3.4-2	The information provided in this table is unsubstantiated. This is also the case with many other tables and figures in Chapter 3.		
3.7.3.4 Groundwater Withdrawals in Gulf Coast	3-54	Table 3.7-3	The information in this table is not comprehensive for active mines in Texas. The table excludes information for the following counties where mines are located in Texas: Franklin, Limestone, Milam, McMullen, Webb, Maverick, Camp, Williamson, and Bastrop.		
3.8.3.4 Domestic Self	3-106	8	Contrary to the indication that domestic self-supplied water wells are not routinely monitored, all wells within and adjacent		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
Supplied Water			to Texas regulated permit areas are monitored as part of each permittee's long-term ground-water monitoring plan.		
3.9.1.3 Summary of Recent Research on Coal Mining and Surface Water Quality	3-7 through 3-9		Each of the studies presented on these pages are relevant to the eastern United States only and do not appear applicable to other regions.		
3.9.4 Gulf Region Water Quality Baseline	3-18		It is unclear on what data the statements in this subsection are based.		
	3-19	Figure 3.9-4	This figure is not a comprehensive representation of all major rivers in the state of Texas.		
3.13 Protected Species	3-119 through 3-125	Table 3.13-1	The table does not appear inclusive of all federally protected species in Texas.		
3.13 Protected Species	3-126	Table 3.13-2	The information in the table indicates that only 10 Texas counties are identified in the Gulf Coast Region; there are 19 Texas counties in which active mining is presently permitted. The error is duplicated in sub-sections 3.17 and 3.19.		
3.10.3.2 Sources of Air Emissions	3-40	2 through 5	The Gulf Coast Region does not contain any coal preparation plants. Ash and sulfur are not emitted during handling and storage of coal.		
3.17.4 Gulf Coast Basin	3-76	Table 3.17-7	The total short tons of coal for Texas listed in this table is discrepant with the value presented in sub-section 3.1.		
3.17.4.1.1 Rail Requirements	3-77	13, 14	This sentence should reflect that all coal shipped by rail in Texas terminates in Texas.		
3.17.4.1.3 Roadway Requirements	3-77, 3-78		The discussion in this sub-section implies that truck haulage of coal/lignite in Texas occurs on public highways. All truck haulage of lignite in Texas is off-road and does not affect public highways.		
3.17.4.2 Gulf Coast Basin Utilities	3-79	Table 3.17-9	It is unclear the reason only three Texas counties were chosen to characterize the origin of coal in this state.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

From: Craynon, John
To: Means, Brent P.; Ehret, Paul; Coker, Jeffrey A. "Jeff"; Calle, Marcelo
Subject: Fw: Indiana, Chapter 3 SPR EIS
Date: Monday, November 01, 2010 1:15:44 PM
Attachments: Indiana Chapter 3 EIS Comments .docx

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

From: Stevens, Bruce A. [<mailto:bstevens@dnr.IN.gov>]
Sent: Monday, November 01, 2010 09:51 AM
To: Craynon, John
Subject: Indiana, Chapter 3 SPR EIS

Attached is the Indiana submission on the above referenced document. Thank you.

Bruce A. Stevens, Director
Indiana Department of Natural Resources
Division of Reclamation
(812) 665-2207

Comment Form

Title of Document	Chapter 3 SPR EIS
Contact Information	
Name	Bruce Stevens
Telephone Number	(812) 665-2207
Email	bstevens@dnr.IN.gov

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
Overall			<p>Chapter 3 is intended to be a comprehensive document specific to the environmental settings of each region. The Chapter is several hundred pages in length. The schedule provided to the cooperating agencies in an e-mail of September 14 called for this chapter to be delivered on Friday, October 22, 2010. This did not occur and it was not until nearly 4:30 p.m., Eastern Time that the cooperating agencies were notified of a delay and that it instead would be provided on Monday morning, October 25 via a Sharepoint site. This notification also stated Chapter 3 would not contain the hydrology portion. It is of extreme difficulty for a cooperating agency to review the chapter with a total systems approach given the fact this rulemaking is predominately hydrology related. Monday morning came and went and parts of Chapter 3 were finally received after 3:00 p.m., Eastern Time. Apparently the agency had not even set up the Sharepoint site as yet because the e-mail indicated that due to issues setting up the Sharepoint site, these parts were being sent e-mail rather than Sharepoint. As a result, Chapter 3 could have been sent in the same fashion on the preceding Friday when they were scheduled to be sent thus giving the cooperating agencies the weekend to include in their review time. Issues with line numbers and pagination necessitated OSM to re-send all six parts of Chapter 3 to the cooperating agencies. This occurred after 4:00 p.m., Eastern Time on Tuesday, October 26. Regardless of the length of this chapter, all of the delays, errors, and resubmissions of information to the Cooperating Agencies, OSM did not provide additional time for review of the non-hydrology parts beyond that November 1</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>deadline stated in their e-mail of October 22. OSM has also stated they expect the hydrology sections to be available by Friday, October 29 and they previously stated in their e-mail of October 22 that the deadline for submission of comments on this portion would be forthcoming. That also did not occur as scheduled and cooperating agencies were notified after 5:00 p.m., Eastern Time on October 29 that it would be provided the next week. It should also be noted Part 3.19 was received the afternoon of October 28 with comments required to be submitted by 10:00 a.m., on November 4. The piece meal processes for supplying information on the draft EIS to cooperating agencies continues to be flawed. It is difficult for a cooperating agency to do anything more than a cursory review of the information given the time constraints placed upon the cooperating agencies. As a result, Indiana cannot perform the adequate review necessary for a comprehensive document of this size and therefore cannot indicate agreement with its contents. Moreover, the reconciliation process for Chapter 2 was no reconciliation process at all but rather the "cooperating agencies" were simply informed that some comments had been accepted and passed along to the consultant. Much of the call was devoted to OSM reiterating the time pressures that the Federal Government has created with this process. In view of the lack of adequate review and comment time and lack of an interactive reconciliation process, Indiana cannot perform a thorough review worthy of an issue of this importance on a document of this size. Our comments in no way should be construed to infer any concurrence with the content of the document or policies that may result from this process.</p>		
3.17.5.1.3	3-85	31	<p>This section refers to Indiana's eight coal producing counties. The section lists seven counties. Coal was produced from 9 Indiana counties in 2009. Coal has been produced from 17 Indiana counties over the past couple decades.</p>		
3.20.15.1	3-137	15	<p>This section states "Indiana has a low number of fatal and non-fatal injuries; however, this may change in the future (Section 3.2.4.2)." Section 3.2.4.2 appears to be titled "Region Seismicity" and appears to be specific to Alaska. As a result, we are not certain as to this reference and we are also</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

From: [Craynon, John](#)
To: [Coker, Jeffrey A. "Jeff"](#); [Means, Brent P.](#); [Calle, Marcelo](#); [Ehret, Paul](#)
Subject: Fw: EIS Comments: Chapter 3
Date: Monday, November 01, 2010 1:15:53 PM
Attachments: [EISCommentCh3.docx](#)

From: Rothman, Paul (EEC) [<mailto:Paul.Rothman@ky.gov>]
Sent: Monday, November 01, 2010 09:47 AM
To: Craynon, John
Cc: Campbell, Carl (EEC) <carl.campbell@ky.gov>; Wahrer, Richard (EEC) <Richard.Wahrer@ky.gov>
Subject: FW: EIS Comments: Chapter 3

Attached are Kentucky's comments on Chapter 3 (EIS). They also include our observations on Section 3.19. We look forward to also providing comments on the section on surface water which we have not received as yet. Thank you for the opportunity to provide review and comment and please let us know if you have any questions.

Comment Form

Title of Document	EIS Chapter 3 (except surface water)
Contact Information	
Name	Kentucky Department for Natural Resources Paul Rothman & Richard Wahrer
Telephone Number	502.564.6940
Email	<u>Paul.rothman@ky.gov</u>; <u>Richard.wahrer@ky.gov</u>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.0	3-1	8	Introduction: KY DNR believes that "succinctly describe the environment" does not apply to this chapter containing over 1,000 pages.		
3.1.3.1.	3-14	29-32	Underground mining is not really an alternative to surface mining. The method utilized will be dependent on (feet of) cover and seam thickness rather than ownership issues.		
Figure 3.1-8	3-15	-----	The legend of the graph is incomplete and does not show extraction methods.		
3.1.3.2	3-16	6-8	This paragraph should be moved under 3.1-10 on page 3-17 for improved clarification.		
3.1.3.8	3-24	24-26	KYDNR believes attributing most surface subsidence to coal mining in the U.S. is inaccurate. Subsidence features in Florida and central Kentucky, for examples, are not coal-related.		
3.1.4	3-26	13-17	Sections 3.1.7.8, 3.1.7.9, 3.1.7.10 should be inserted here as they are closely related to, and a necessary artifact to, underground mining methods.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.1.5	3-26	25-26	It should be noted that an augur method can be employed instead of underground mine entries when limits of surface mining are reached.		
3.1.5	3-28	17	An AOC variance may also be necessary due to the requirements of the post-mining land use		
3.1.5.1	3-28	35	The statement that "spoil from almost all succeeding cuts must be disposed in fills" is incorrect. Usually, the first cut must be placed in a fill and spoil is backfilled on the contour behind the progressing operation to ensure contemporaneous reclamation.		
3.1.5.2.	3-30	2	Please delete "separate entity" and replace with "different mining type."		
3.1.5.2.	3-30	13	"entail disposal of large volumes of excess spoil" is based on the assumption that there are no existing benches to backfill there is no re-mining occurring?		
3.1.5.3.	3-32	2	Please insert that "draglines are not widely utilized in Central Appalachia.		
3.1.5.4	3-33	3-4	It should be noted that only the first cut of overburden is disposed in off-site storage; remaining cuts are backfilled behind the progressing operation.		
3.1.5.6	3-34	8-9	"The balance of the broken overburden is mandated by regulation to be placed onto the mountaintop area to achieve the post-mining land use" is completely wrong. By regulation, if most of the spoil is placed back on top, then it		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			would be area mining and not MTR.		
3.1.5.6.	3-36	3-7	KYDNR is perplexed why it is stated that this DEIS will refrain from using the misnomer "mountaintop mining" and yet uses this term just 4 lines down in the Figure 3.1-23 heading of Mountaintop Mining. KYDNR prefers the term "mining in mountainous areas" as used in the national GAO reports on coal mining.		
3.1.7.2.	3-40	14-16	KYDNR believes that the description of a head of hollow fill is incorrect by stating it contains a chimney drain. Very few, if any of, Kentucky's head of hollow fills have been constructed with a chimney drain.		
3.1.7.3.	3-41	18-19	It should be noted that in many cases wing dumping is not allowed and may be a violation of Kentucky regulations.		
3.1.7.4.	3-42	13-18	KYDNR believes it would be more appropriate to gather fill data from the last five years rather than from 2001-2005. This information is readily available from annual OSM/State reports. KYDNR also believes that the number of approved (permitted) fills is misleading as no information on constructed fills is given. Based on state/federal studies, it is estimated that 40-60% of the Kentucky permitted fills are NOT constructed.		
3.1.8.	3-50	24	"backfilling and regarding" should be corrected to "backfilling and regrading"		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.1.9	3-55	-----	Figure 3.1-29: The legend is incomplete; each data set has 7 bars; the legend contains only 5 regions.		
3.1.9.1.4.	3-59	2-3	No source data/report is given for the comparison of tons/man-hour when comparing surface/underground efficiencies.		
3.3.0	3-37	33-39	Though KYDNR acknowledges soil was often removed and "lost" in the past, current regulations require that the topsoil layer be salvaged and stored until reclamation occurs.		
3.3.1.1	3-40	2	It should be noted that coal has been mined for nearly 200 years in Kentucky.		
3.3.1.1	3-40	4	Still another reference to "mountaintop mining."		
3.13.0	3-120	-----	In Table 3.13.1: in reference to the blackside dace, the genus name has been changed (2009) from <i>Phoxinus</i> to <i>Chrosomus</i> . The species name remains the same.		
	3-128	-----	Table 3.13.2: same correction as above		
3.19.1.1.1.	3-3	-----	Figures 3.19-1 through Figure 3.19-19: The same map presented for a variety of statistics and demographics is nearly incomprehensible. A more detailed map of each of the coal regions would be more appropriate to clarify and understand the information given in the narratives and tables.		
3.19.1.2.1	3-30	9-12	To better characterize the demographics of the mining industry, it should be noted that the workforce that assists and supports the mining		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			industry is ten-fold the number given in Table 3.19-6.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

From: Uranowski, Lois J.
Sent: Tuesday, November 30, 2010 9:00 AM
To: Robinson, Michael K. "Mike"; Shope, Thomas D. "Tom"
Subject: FW: Mutiny

FYI

Lois J. Uranowski PE
Chief, Ecological Services and Technology Transfer Branch
Technical Support Division
3 Parkway Center
Pittsburgh, PA 15220
luranowski@osmre.gov
412 937 2805

From: Stoltz, Jason R.
Sent: Monday, November 29, 2010 10:30 AM
To: Uranowski, Lois J.
Subject: FW: Mutiny

This is sent just FYI...did not know if you had seen this yet.

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.¹

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.

¹ 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,



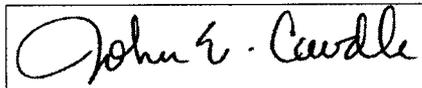
Randall C. Johnson
Director
Alabama Surface Mining Commission



Bruce Stevens
Director
Division of Reclamation
Indiana Department of Natural Resources



Carl E. Campbell
Commissioner
Kentucky Department for Natural Resources

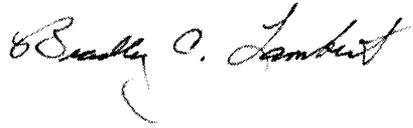


John Caudle
Director
Surface Mining and Reclamation Division
Railroad Commission of Texas

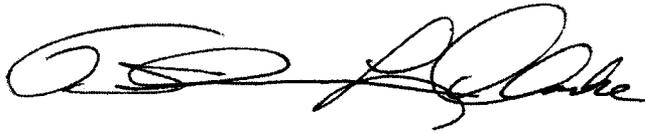


John Baza
Director

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

From: Calle, Marcelo
To: Means, Brent P.
Subject: Texas
Date: Tuesday, November 02, 2010 11:57:00 AM
Attachments: Chapter3_TX.DOCX

Marcelo Calle

Hydrologist

Office of Surface Mining Reclamation and Enforcement
Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

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

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

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

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

Comment Form

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

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

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.1.7.7 Mine Reclamation	3-46	13	The statement "almost all sites generate excess spoil that must be hauled to valley fills..." does not characterize surface mining operations which do not generate excess spoil, such as in the Gulf Coast region.		
3.1.7.7 Mine Reclamation	3-46	22, 29	The description of topsoil substitute (rock-based material broken up by passage of tracked equipment) appears to only characterize topsoil substitution in the eastern United States rather than other regions, where unconsolidated overburden material is used.		
3.1.9.3.2 Property Ownership	3-63	11	The statement that "about half of the Federal surface estate in the Gulf Coast Region is underlain by federally owned minerals" is not substantiated and appears incorrect.		
3.3.2 Colorado Plateau Region	3-12	Figure 3.2-4	The Appalician Basin Region Seismic Hazard Map appears to be incorrectly contained in this subsection.		
3.2.1.5 Depositional Setting	3-16	13	The coal bearing formation, Claiborne Group, is incorrectly referred to as the Clairborne Group.		
3.2.1.5.2 The Claiborne Group	3-18	31	Discussion in this subsection incorrectly indicates that active mining is occurring in this formation.		
3.2.5 Other Western Interior Region	3-32	5	Central Texas is now identified as being contained within the Other Western Interior Region, unlike discussions in other sections.		
3.3.3 Gulf Region	3-44		A dominant soil associations table has been provided for all regions but the Gulf Coast Region.		
3.4.0.1 Length (Perennial, Intermittent and Ephemeral)	3-54, 3-55	Table 3.4-2	The information provided in this table is unsubstantiated. This is also the case with many other tables and figures in Chapter 3.		
3.7.3.4 Groundwater Withdrawals in Gulf Coast	3-54	Table 3.7-3	The information in this table is not comprehensive for active mines in Texas. The table excludes information for the following counties where mines are located in Texas: Franklin, Limestone, Milam, McMullen, Webb, Maverick, Camp, Williamson, and Bastrop.		
3.8.3.4 Domestic Self	3-106	8	Contrary to the indication that domestic self-supplied water wells are not routinely monitored, all wells within and adjacent		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
Supplied Water			to Texas regulated permit areas are monitored as part of each permittee's long-term ground-water monitoring plan.		
3.9.1.3 Summary of Recent Research on Coal Mining and Surface Water Quality	3-7 through 3-9		Each of the studies presented on these pages are relevant to the eastern United States only and do not appear applicable to other regions.		
3.9.4 Gulf Region Water Quality Baseline	3-18		It is unclear on what data the statements in this subsection are based.		
	3-19	Figure 3.9-4	This figure is not a comprehensive representation of all major rivers in the state of Texas.		
3.13 Protected Species	3-119 through 3-125	Table 3.13-1	The table does not appear inclusive of all federally protected species in Texas.		
3.13 Protected Species	3-126	Table 3.13-2	The information in the table indicates that only 10 Texas counties are identified in the Gulf Coast Region; there are 19 Texas counties in which active mining is presently permitted. The error is duplicated in sub-sections 3.17 and 3.19.		
3.10.3.2 Sources of Air Emissions	3-40	2 through 5	The Gulf Coast Region does not contain any coal preparation plants. Ash and sulfur are not emitted during handling and storage of coal.		
3.17.4 Gulf Coast Basin	3-76	Table 3.17-7	The total short tons of coal for Texas listed in this table is discrepant with the value presented in sub-section 3.1.		
3.17.4.1.1 Rail Requirements	3-77	13, 14	This sentence should reflect that all coal shipped by rail in Texas terminates in Texas.		
3.17.4.1.3 Roadway Requirements	3-77, 3-78		The discussion in this sub-section implies that truck haulage of coal/lignite in Texas occurs on public highways. All truck haulage of lignite in Texas is off-road and does not affect public highways.		
3.17.4.2 Gulf Coast Basin Utilities	3-79	Table 3.17-9	It is unclear the reason only three Texas counties were chosen to characterize the origin of coal in this state.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

From: [Jose Sosa](#)
To: [Winters, William R. "Bill"; Sloanhoffer, Nancy E.; Varvell, Stephanie L.; Shawley, Dianne M](#)
Cc: [Randy Sosa; "Mike Stanwood"; John Maxwell; Caroline Bari; imm@manfredonialaw.com](#)
Subject: Meeting This Week
Date: Tuesday, February 15, 2011 4:50:37 PM

Bill:

This is to confirm that we are not meeting this week as we had discussed during our meeting last week. We are working with our subcontractors to develop the plan to address the comments received from OSM and the items contained in the attachment to the cure notice. It looks like we will have a coherent plan by the Thursday of this week that we will be forwarding to OSM for review and concurrence.

Regards

Jose

Allen, Melissa M

From: Pizarchik, Joseph G
Sent: Tuesday, October 12, 2010 11:55 AM
To: 'DANADEAN@utah.gov'; Craynon, John; Ehret, Paul
Cc: 'aprilabate@utah.gov'; 'daronhaddock@utah.gov'; 'ingridwieser@utah.gov'; 'jamesowen@utah.gov'; 'jimdsmith@utah.gov'; 'joehelfrich@utah.gov'; 'johnbaza@utah.gov'; 'kevinlundmark@utah.gov'; 'peterbrinton@utah.gov'; 'priscillaburton@utah.gov'; 'stevechristensen@utah.gov'
Subject: Re: Utah's Comments - Chapter 2

Thank you Associate Director Dean. We appreciate your input. John Craynon has the lead in handling comments, etc. and should be in touch regarding the reconciliation meeting.

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

From: Dana Dean <DANADEAN@utah.gov>
To: Craynon, John; Pizarchik, Joseph G; Ehret, Paul
Cc: April Abate <aprilabate@utah.gov>; Daron Haddock <daronhaddock@utah.gov>; Ingrid Campbell <ingridwieser@utah.gov>; James Owen <jamesowen@utah.gov>; Jim Smith <jimdsmith@utah.gov>; Joe Helfrich <joehelfrich@utah.gov>; John Baza <johnbaza@utah.gov>; Kevin Lundmark <kevinlundmark@utah.gov>; Peter Brinton <peterbrinton@utah.gov>; Priscilla Burton <priscillaburton@utah.gov>; Steve Christensen <stevechristensen@utah.gov>
Sent: Tue Oct 12 09:14:28 2010
Subject: Utah's Comments - Chapter 2

Director Pizarchik,

I have attached Utah's comments regarding Chapter 2 of the Stream Protection Rule Environmental Impact Statement.

We have dedicated as much time as possible to these comments, but we feel that our comments were somewhat limited by the short amount of time allowed for review.

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

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

Please let me know if you have any questions or concerns regarding our comments, and when the reconciliation meeting will take place.

Thank you,

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

Allen, Melissa M

From: Craynon, John
Sent: Tuesday, October 12, 2010 4:15 PM
To: Ehret, Paul; Calle, Marcelo; Coker, Jeffrey A. "Jeff"; Means, Brent P.
Subject: FW: Dave Clark (NM) SPR EIS Chapter 2 comments
Attachments: Dave Clark Comment form.Chapter2_10.5.2010.docx

From: Clark, David, EMNRD [<mailto:david.clark@state.nm.us>]
Sent: Wednesday, October 06, 2010 12:07 PM
To: Craynon, John
Cc: Ohara, Jim
Subject: Dave Clark (NM) SPR EIS Chapter 2 comments

Hi John,

Hope you are doing well. My comments on Chapter 2 of the draft Stream Protection Rule EIS are attached.

Happy trails,

Dave Clark
New Mexico Mining and Minerals Division

Confidentiality Notice: This e-mail, including all attachments is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited unless specifically provided under the New Mexico Inspection of Public Records Act. If you are not the intended recipient, please contact the sender and destroy all copies of this message. -- This email has been scanned by the Sybari - Antigen Email System.

Comment Form

Title of Document	CHAPTER 2 DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES
Contact Information	
Name	David Clark
Telephone Number	(505) 476-3416
Email	david.clark@state.nm.us

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
TOC	i	37	<i>correct capitalization</i>		
TOC	ii	4	<i>correct tab and capitalization</i>		
2.2.2	2-2	9	<i>...opportunity to discuss</i>		
2.3.2.2	2-4	28	<i>...includes the <u>no</u> action</i>		
2.3.2.2	2-4	32	<i>...alternatives</i>		
2.4	2.5	17	<i>(Proposed Action)</i>		
2.4.7	2-8	11	<i>...reaching</i>		
2.4.8	2-8	15	<i>...dealing <u>with</u> fill / Alternatives <u>include</u></i>		
2.4.9	2-9	14	<i>...regulatory <u>authority</u> would</i>		
2.4.10	2-9	22	<i>...establishes a bonding</i>		
2.4.10	2-9	23	<i>...hardwoods</i>		
2.4.11	2-10	1	<i><u>with</u> enhancement</i>		
2.5	2-10	24	<i>...of the U.S.,</i>		
2.5.1.2	2-11	19	<i>...seam)</i>		
2.5.1.2	2-11	26	<i>new paragraph starting with Geologic:</i>		
2.5.1.4	2-12	9	<i>...that_ avoiding</i>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.3.5	2-19	1	...or impacted <u>streams</u> .		
2.5.3.11	2-21	30	...enhancement to <u>to</u> the same		
2.5.4.2	2-23	11	<i>SPR is not previously defined or listed in the acronym appendix (or in draft Chapter 1)</i>		
2.5.4.2	2-23	14	...chemicals		
2.5.4.5	2-23	37	...prior <u>to</u> the		
			SUBSTANTIVE COMMENTS FOLLOW		
2.5.3.10	2-21	4-7	<p>Some post mining land uses may not be compatible with native plant species (e.g., special use pasture, cropland); this fact could be clarified.</p> <p>The application of Clementsian climax theory to arid and semi-arid deserts and rangelands has been largely abandoned by plant ecologists. An exception to reestablishing the "climax" plant community would likely be necessary in the western region. The Reclaimed Desired Plant Community (RDPC) advocated in Section 2.5.4.10 of Full-Suite Alternative 4 may be more applicable nation-wide. I believe that the RDPC approach should be OSM's Proposed Action in Section 2.5.5.10.</p>		
2.5.3.10	2-21	14-15	OSM may need to define the terms "forest" and/or "forested", probably by minimum tree density, and perhaps by habitat (e.g., drainage bottoms vs. uplands) in order to standardize the application of this proposed requirement.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Allen, Melissa M

From: Craynon, John
Sent: Tuesday, October 12, 2010 4:11 PM
To: Means, Brent P.; Ehret, Paul; Calle, Marcelo; Coker, Jeffrey A. "Jeff"
Subject: FW: Kentucky's comments on Chapter 2 - Stream Protection EIS - Description of Proposed Actions and Alternatives
Attachments: EIS Comment form.docx
Importance: High

From: Rothman, Paul (EEC) [<mailto:Paul.Rothman@ky.gov>]
Sent: Monday, October 11, 2010 3:59 PM
To: Craynon, John
Cc: Campbell, Carl (EEC); Arnett, Larry (EEC); Shannon, Deneen (EEC); Wahrer, Richard (EEC)
Subject: Kentucky's comments on Chapter 2 - Stream Protection EIS - Description of Proposed Actions and Alternatives
Importance: High

Mr. John Craynon,

Attached for OSM's consideration are the Kentucky Department for Natural Resources' comments and suggestions on **Stream Protection EIS - Chapter 2 - Description of Proposed Actions and Alternatives**. We sincerely appreciate the opportunity to provide review and comment on this document for the potential impact it could have on the Commonwealth of Kentucky is immeasurable. Again, thank you and please let us know if you have any questions.

Paul Rothman / Richard Wahrer on behalf of Commissioner Carl E. Campbell

Comment Form

Title of Document	Chapter 2 – Description of Proposed Action and Alternatives
Contact Information	
Name	Paul Rothman / Richard Wahrer
Telephone Number	502/ 564 - 6940
Email	Paul.Rothman@ky.gov / Richard.Wahrer@ky.gov

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.4.1	2-22, 2-23	2-35 1-8	Stream Definition- The Kentucky Department for Natural Resources (KYDNR) believes that Alternative # 4 is the preferred option of a stream definition. Use of the CWA definition of "waters of the U.S." should hopefully provide for much improved consistency among state and federal mining and water agencies. It should be noted, however, that this definition has previously been inconsistently applied by COE/EPA regulators, who have often determined jurisdictional waters extending to the ridgetop where ephemeral reaches occur. Proposed regulatory language should include "with the exception of ephemeral streams."		
2.5.1.2	2-11	10-36	Baseline Data Collection and Analysis- KYDNR believes that Alternative 1, the No Action Alternative is the most effective and appropriate alternative of those proposed. Because of the evolution of the CWA 402 (NPDES) permitting requirements, it would be both redundant and a waste of resources to institute those same requirements for SMCRA permits. Many of the trace metals now required by the 402 program (mentioned in Alternative # 2, # 4, and # 5) are geologically and regionally isolated and, if not found after 5 quarterly samples, may be dropped from the analysis. The 402 program also requires biological monitoring. Implementation and compliance remains unproven at this time and it would be short-sighted for OSM to prematurely make a rule that would mimic another component of a surface mining permitting program		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.5.3	2-26	13-22	<p>Definition of Material Damage to the Hydrologic Balance- KYDNR believes the Preferred Alternative (# 5) is the best definition of material balance of those proposed. However, language should be inserted after "measurable adverse impact (Line 13) that gives a quantifiable template such as "based on federal and state water quality standards." Water quantity impacts should be clarified by mentioning flooding prevention. As for standards, the definition seems to largely address surface water systems. Material damage can occur in ground water systems. This commenter also interprets "degraded" (Line 14) as a change over time. Thus time related qualifiers should be included in proposed regulatory language, e.g., chronic, short-term, long-term or permanent as it relates to the impact. Paramount to this definition is the concept of an impact over time, i.e., material damage is NOT a single exceedence of a water quality standard, but rather persistent effects such as acid mine drainage.</p>		
2.5.5.4	24-41	2-26	<p>Activities In or Near Streams- KYDNR believes that the Preferred Alternative # 5 is the best option available. KY DNR has already entered into MOU with OSM, EPA and COE that recognizes the "Fill Placement Optimization Process" (RAM # 145) as already implementing the proposed language found in # 5 and sanctioned by these agencies. The CHIA findings (for material damage) and the CWA 402 permitting process would address the concerns outlined in Lines 26-34.</p>		
2.5.4.5	33-39 1-3	2-23 2-24	<p>Mining Through Streams- KYDNR believes that Alternative # 4 offers the most reasonable flexibility of all the options proposed. Due to the cultural uses and pre-SMCRA mining and reclamation techniques, impaired streams (pre-mining) are often found in the coalfields, and current mining and reclamation standards provide a unique opportunity for restoration of these degraded resources thus greatly improving upon their current conditions. KYDNR realizes, however, that restoration results may not greatly improve upon the pre-mining conditions due to any non-mining activity that continues to exist in that watershed. The expanded fish and wildlife enhancement requirements outlined in Alternative # 5 are too restrictive and hold the coal permittee responsible for non-mining activities in the watershed.</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.1.6	24-31	2-12	<p>Monitoring During Mining and Reclamation- KYDNR believes the No-Action Alternative #1 for monitoring requirements until bond release is the best available choice. Though there is no requirement to do so, it is imperative that the regulatory authority possess the ability to waive parts of the monitoring program. KYDNR remains consistent in their monitoring approach as previously mentioned in comments regarding Baseline Data Collection and Analysis. Since the CWA 402 monitoring program would mimic those requirements outlined in Alternative # 5, it would be unnecessary and redundant for SMCRA to promulgate duplicative regulations.</p>		
2.5.1.7	33-35	2-12	<p>Corrective Action Thresholds- KYDNR strongly believes that the No-Action Alternative # 1 is most appropriate choice. Alternative # 2 basically requires a NEPA-like approach to cumulative impacts analysis as required by COE ... a federal agency undertaking. States with coal primacy programs are not subject to NEPA analysis. Alternative # 2 can only be realized if OSM successfully takes CFR 733 action against a state. The other Alternatives relate to the establishment of a Total Maximum Daily Load (TMDL) program, already implemented and enforced by a state CWA agency. KYDNR urges OSM not to enter a theater of jurisdiction that has already been developed, implemented, regulated and enforced by CWA agencies. The mine permittee is subject to the standards and requirements set by the CWA 402 permit.</p>		
2.5.4.8	2-24	16 - 21	<p>Surface Configuration and Fills – KYDNR believes that alternative # 4 is the best choice, for it provides the degree of flexibility needed by state regulatory programs when developing engineering design and reclamation protocols tailored to the various topographic characteristics that may be encountered in each state.</p>		
2.5.4.9	2-24 2-25	29 -35 1 - 8	<p>AOC Exceptions - KYDNR believes that # 4 is the best alternative for it provide the flexibility necessary to set limitations or exceptions on AOC based upon regulation, site specific conditions and local community needs.</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.1.10	15-16	2-13	<p>Revegetation and Topsoil Management- KY DNR believes that the No Action Alternative # 1 is the most appropriate. This alternative provides the optimal flexibility necessary for determining the most appropriate strategy and revegetation "recipe" for the approved post-mining land use (PMLU) with consideration given to the type of mining operation, topography and the landowner's desires. While reforestation is strongly promoted and endorsed by the KY DNR, we remain sensitive to landowner rights. Alternative # 3 is not a viable option for it promotes a condition that fails to facilitate the "normal husbandry practices" that may be necessary to meet the bond release standards attributable to a number of PMLU's. If the permittee is only allowed the ability to "revegetate with native species consistent with the climax native plant community regardless of the PMLU" we are creating a situation where productivity standards on managed land uses cannot be met and bond liability period would be extended.</p>		
2.5.1.11	18-31	2-13	<p>Fish and Wildlife Protection and Enhancement- KYDNR believes that the No-Action Alternative # 1 is just as effective, and perhaps even more so, than the other alternatives when implementing fish and wildlife enhancements during reclamation. Rather than pursuing the concepts outlined in Alternatives # 2, #4 and # 5, it may be more productive to create F&W enhancements on other areas thereby facilitating better use of the area by targeted wildlife species. The regulatory authority must have that flexibility in undertaking these responsibilities, as well as the ability to acquiesce to the recommendations of state and federal wildlife agencies. The 1996 OSM/FWS Biological Opinion on T/E species details the responsibilities of the RA and coal applicant for species protection and enhancement that will fulfill the requirements for the SMCRA and the CWA 404 permit. Added requirements are not needed as the Biological Opinion also addresses unlisted species of concern and the required consultation with the state fish and wildlife agency. Coal regulatory authorities typically have protection and enhancement plans in place for species associated with specific post-mining land uses</p>		

From: [Ehret, Paul](#)
To: [Means, Brent P.](#); [Coker, Jeffrey A. "Jeff"](#); [Dale, Debbie](#); [Calle, Marcelo](#)
Cc: [Craynon, John](#)
Subject: Fw: Draft EIS Review, Chapter 3, Section 3.6
Date: Tuesday, November 16, 2010 11:30:23 AM
Attachments: [EIS Comment form - Chapter 3 SW.DOCX](#)

Somewhat late.

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

From: John Caudle [<mailto:john.caudle@rrc.state.tx.us>]
Sent: Tuesday, November 16, 2010 10:20 AM
To: Craynon, John
Cc: gconrad@imcc.isa.us1; Ehret, Paul; Stephanie Reed <stephanie.reed@rrc.state.tx.us>
Subject: Draft EIS Review, Chapter 3, Section 3.6

John, Here is our review of Section 3.6, surface water hydrology. I apologize for its lateness, but due to staff schedules it was just not possible to get this to you any sooner. I understand that our comments may not be considered since they are late, but I urge you to at least read them over and communicate with your contractor the vast inadequacy of the surface water hydrology section for, at a minimum, the Gulf Coast Region.

John E. Caudle, P.E., Director
Surface Mining and Reclamation Division
Railroad Commission of Texas
(512)463-6901

**DRAFT ENVIRONMENTAL IMPACT STATEMENT
SECTION 3.6 – SURFACE WATER HYDROLOGY
RAILROAD COMMISSION OF TEXAS, SURFACE MINING AND RECLAMATION DIVISION
COMMENTS, NOVEMBER 1, 2010**

The usefulness of the surface water section (Section 3.6) of draft Chapter 3 for the EIS is of great concern. This section goes into some detail (largely unsupported with valid technical references) of the genesis of the surface water regime in the Appalachian region, but offers next to nothing for other coal regions. Specifically, SMRD reviewed the introduction and Section 3.6.2 for the Gulf Coast surface water description. Other than a false impression that coal mining in Texas and other states in the identified Gulf region occurs mainly on the coast, this section offers little. It is clear that the author(s) of this section gathered little information from readily available sources, which could include USGS, state environmental agencies and data from surface mining permits that has been collected for over 30 years. Instead the author(s) laments the lack of “published” data to support a treatise on the surface water hydrologic regime within the states identified as being in the Gulf Coast Region. It is clear that a total lack of understanding of SMCRA exists within the talent pool gathered to prepare this EIS. If this were not the case, there would at least be a discussion of data that is gathered within each state to establish baseline as well as during and postmining surface water hydrologic conditions for each coal mining permit issued and as support for all bond release.

As a coordinating agency, the Surface Mining and Reclamation Division (SMRD) of the Railroad Commission of Texas (Commission) has chosen to participate in a process that, from the outset with the first coordinated conference call, seems flawed. With a near impossible time schedule, our review of the Section 3.6 has been delayed. Coordination between OSM and the coordinating agencies continues to be at a minimum in this process. Nonetheless, the SMRD continues to participate at this time, even though our patience with the process is growing thin, and offers the attached late comments on draft Section 3.6. Generally, the statements, data and assumptions provided in section 3.6 are either lacking substantiation rendering an educated review of the information infeasible or the section is devoid of any information. As with the draft Chapter 3, this section seems hastily prepared, ridden with typographical and editorial errors. The evaluations provided in the chapters appear to inconsistently characterize the Gulf Coast Region as occurring on the gulf coast line and does not represent the diverse surface water regimes encountered in Texas, let alone all of the states identified as being within the Gulf Coast Region.

Comment Form

Title of Document	Review of Draft EIS Section 3.6
Name	John E. Caudle Director, Surface Mining and Reclamation Division, Railroad Commission of Texas
Telephone Number	512.463.6901
Email	john.caudle@rrc.state.tx.us

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.6.0	3-2	24	The hydrologic analysis for probable hydrologic <u>consequences</u> determination		
		38	in mines that <u>emphasize</u>		
3.6.0	3-3	1	(runoff temporal distribution) and seasonal flows)		
3.6.1.3	3-19	1	SO ₂		
	3-26	23-24	“Average annual precipitation in the coastal mining area of Texas exceeds 56 inches.” This statement implies that mining on the coast. In addition, using the average does not adequately characterize the variation in rainfall across Texas and the Gulf Coast Region. Annual rainfall in areas of Texas where surface coal mining occurs ranges from about 20 inches in south Texas to 50 inches in northeast Texas.		
3.6.3.1	3-27		Figure title and graphic not on same page.		
	3-28		Figure doesn't support noted max rainfall on pg 3-		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			26 (no active mining in areas where rainfall exceeds 50 inches).		
	3-29		Figure legend doesn't describe units of evapotranspiration.		
3.6.3.2	3-31 and 32		Seriously? The only information that could be found was for low-flow ungauged streams in Alabama? There is considerable information published by USGS characterizing streams in states. It is not even clear why this information on stream regression is reported.		
3.6.3.3	3-32	13	Units of measurement for EC reported in dS/m rather than the more common $\mu\text{S}/\text{cm}$.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

From: [Craynon, John](#)
To: [Coker, Jeffrey A. "Jeff"](#); [Means, Brent P.](#); [Ehret, Paul](#); [Calle, Marcelo](#)
Subject: FW: EIS Comments: Chapter 3.6 Surface Water
Date: Monday, November 15, 2010 12:16:08 PM
Attachments: [EISCh36SurWatCom.docx](#)

From: Wahrer, Richard (EEC) [mailto:Richard.Wahrer@ky.gov]
Sent: Wednesday, November 10, 2010 8:57 AM
To: Craynon, John
Cc: Rothman, Paul (EEC); Wahrer, Richard (EEC)
Subject: EIS Comments: Chapter 3.6 Surface Water

Due to the quick turnaround time of receipt of this subchapter and subsequent submission of comments, attached is only a cursory evaluation. Though a highly technical topic, a paucity of technical studies and publications concerning mining impacts on surface water was noted, especially in the non-Appalachian regions.

Richard J. Wahrer, Ph.D.
Environmental Scientist

Paul Rothman
Environmental Scientist

Office of the Commissioner
Kentucky Department for Natural Resources
502.564.6940

Comment Form

Title of Document	EIS Chapter 3.6 Surface Water
Contact Information	
Name	Kentucky Department for Natural Resources Paul Rothman & Richard Wahrer
Telephone Number	502.564.6940
Email	<u>Paul.rothman@ky.gov</u>; <u>Richard.wahrer@ky.gov</u>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.6	-----	-----	<p>General Comment # 1: state mining statutes and regulations emphasize protection of surface water at mining operations as required by federal law no matter where the operation is located (nationally). Impacts from mining, as well as any earth-moving activity, will occur, as reflected in varying levels of TDS, conductivity or other WQ parameter. Given that mining is conducted across the nation (this EIS delineates 7 regions), impacts, too, will occur nationally.</p> <p>If it is OSM's intent to propose rule-making based on the information and identified impacts discussed in this EIS, then proposed rules regarding surface water will be directed toward, perhaps exclusively, to Appalachia, rather than addressing mining impacts nationally. This focused undertone is obviously evidenced by the following: One of the surface water components in this sub-chapter is Water Quality (3.6.1.3, 3.6.2.3., 3.6.3.3, 3.6.4.3, etc.). The discussion of this topic for the:</p> <p>Appalachian Basin contains 14 paragraphs with 7 tables and graphs; Colorado Plateau contains 6 paragraphs and 0 tables and graphs; Gulf Coast contains 1 paragraph and 0 tables and graphs; Illinois Basin contains 5 paragraphs and 1 table or graph; N. Rocky Mts. contains 4 paragraphs and 1 table or graph; Northwest contains 3 paragraphs and 0 tables or graphs and Western Interior contains 7 paragraphs and 3 tables or graphs.</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>The Appalachian water quality section targets total dissolved solids, sulfates and conductivity measures and studies. These parameters are rarely mentioned, if at all, in the other regional water quality sections. Since these parameters are often found with earth moving activities, should they not be mentioned in other-region mining discussions? This report seems to infer that these parameters are a negative impact from mining, but only in Appalachia. If high conductivities reflect undesirable water quality in the eastern United States, wouldn't high conductivity in the western United States be also undesirable? The fact that very few studies are cited for the non-Appalachia regions does not mean they don't exist. Ignoring the evidence will not make it go away.</p> <p>Another obvious difference between the Appalachia section from the other regions is the inclusion of 3.6.1.2.1. "Mining and Reclamation." This subsection described fill construction, hydrology of mined lands, degree of spoil compaction and rainfall-runoff response in the Appalachian region. However, these topics were not addressed in the other region reports, though those regions may contain fills and certainly mine-run spoils.</p>		
			<p>General Comment # 2: In reference to the studies of water quality (TDS, Conductivity, sulfates), caution should be exercised in the conclusion that mining activities alone result in the values given. Often, sampling points were located far from the mining activity (but very accessible to the sampling personnel) and included impacts from residential, agriculture, roads (and construction) and light industrial facilities. All of these impacts could contribute to TDS and conductivity. This same comment was voiced in the previous 2003 Mountaintop Mining EIS.</p>		
3.60	3-2	1-8	<p>As stated, the sources of data in this report emanate from journals and publications from 1977-1984. KYDNR believes that using 26-33 yr. old data to support present day conclusions and future expectations is inappropriate. Technologies and testing have improved dramatically since the beginning of SMCRA programs and, in the current atmosphere of EPA scrutiny, water quality studies and impacts to aquatic life have been initiated. Perhaps rule-making and the establishment of standards should be postponed until the</p>		

Gardner, Linda R. (Contractor)

From: Greg Conrad [gconrad@imcc.isa.us]
Sent: Friday, December 03, 2010 9:59 AM
To: Ehret, Paul
Subject: EIS Matters
Attachments: Pizarchik Letter re Draft EIS.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Green Category

Paul:

I'm assuming you've seen the attached letter sent by the cooperating state agencies to Joe. Have you heard anything at all about a potential response? If not, any idea who I could check with at OSM to get an idea when they might get a response?

Thanks,

Greg

Gregory E. Conrad
Executive Director
Interstate Mining Compact Commission
445A Carlisle Drive
Herndon, VA 20170
Ph: 703.709.8654
Fax: 703.709.8655
Email: gconrad@imcc.isa.us
Website: www.imcc.isa.us



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.¹

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.

¹ 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



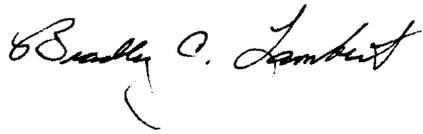
Carl E. Campbell
Commissioner
Kentucky Department for Natural Resources



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

Allen, Melissa M

From: Coker, Jeffrey A. "Jeff"
Sent: Wednesday, October 06, 2010 3:11 PM
To: Richard Currit; Mary M. Hopkins
Cc: Mitchell, Maria M.; Calle, Marcelo; Craynon, John; Ehret, Paul; Means, Brent P.
Subject: RE: FW: OSM Stream Protection Rule EIS - Chapter II

Thanks for your prompt review and response. We will get Chapter III to you for your review as soon as we get it. As of now, the schedule for receipt / distribution of Chapter III to the cooperating agencies is October 22.

From: Richard Currit [<mailto:RCURRI@state.wy.us>]
Sent: Wednesday, October 06, 2010 2:57 PM
To: Coker, Jeffrey A. "Jeff"; Mary M. Hopkins
Subject: Re: FW: OSM Stream Protection Rule EIS - Chapter II

Mr. Coker,

We have reviewed Chapter and will not have any comments on the document.

Sincerely,

Richard L. Currit
Senior Archaeologist
Wyoming State Historic Preservation Office
307-777-5497
rcurri@state.wy.us

**DRAFT ENVIRONMENTAL IMPACT STATEMENT
CHAPTER 4 – ENVIRONMENTAL CONSEQUENCES
RAILROAD COMMISSION OF TEXAS, SURFACE MINING AND RECLAMATION DIVISION
COMMENTS, JANUARY 26, 2011**

The draft Chapter 4 for the EIS is of great concern. This chapter is intended to analyze the impacts of implementing five alternatives to a new stream protection rule. The analysis for each alternative goes into some detail (largely unsupported with valid technical references or data) of the impacts from implementing each alternative on, in general, the Appalachian coal region. Little detail is provided for other regions, however, the analyses are rife with innuendo and outright ludicrous assertions that whatever impacts are discussed will be the same or similar for all coal regions. This is perpetrated by only discussing various reports that are purported to support some seemingly predisposed opinion as to the impacts of mining on various elements of the environment and society. Again, these discussions are generally not supported by fact, and in some cases actually skew conclusions reached in the referenced reports. Due to time and staffing constraints, SMRD was only able to review Section 4.0, 4.1, 4.5 and 4.7 in any detail. While these sections were reviewed, our review was not exhausting, partly due to the short timeframe allowed for review, but also because OSM did not provide any supporting information that was used to reach some of the main conclusions drawn on impacts to mining and reclamation within each coal region. It is clear that the author(s) of this section gathered little information regarding the Gulf Coast region, as very few specific comments even mentioned the region. The author(s) draw conclusions regarding environmental and societal impacts from mining activities in the Appalachian region, whether valid or not, and apply these same impacts to coal mining in other regions by inference, mainly as a result of a lack of specific discussion about each region.

As a coordinating agency, the Surface Mining and Reclamation Division (SMRD) of the Railroad Commission of Texas (Commission) has chosen to participate in a process that, from the outset with the first coordinated conference call, seems flawed. Coordination between OSM and the coordinating agencies continues to be at a minimum in this process. Data sharing has been non-existent with respect to supporting conclusions reached in the many decision steps documented in the draft chapters reviewed to date. Nonetheless, the SMRD continues to participate at this time as a signatory to a Memorandum of Understanding with OSM, even though our patience with the process is growing thin, and offers the attached comments on draft Chapter 4. As with the draft Chapter 3, this chapter seems hastily prepared, ridden with typographical and editorial errors, which we have neither the time nor the inclination to catalog for the harried author(s) of this report.

Comment Form

Title of Document	Review of Draft EIS Chapter 4
Name	John E. Caudle Director, Surface Mining and Reclamation Division, Railroad Commission of Texas
Telephone Number	512.463.6901
Email	john.caudle@rrc.state.tx.us

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.1.1	4-5	16	Based on production information provided by OSM, the total 2008 production for the Gulf Coast region should be 45.7 million tons per year (assuming AR, LA, MS and TX comprise the Gulf Coast region) and the underground mining production should be 0.1 million tons per year (for AR) with like adjustment to the surface mining production.		
4.0.5	4-6	1	The genesis of the acres disturbed for the Gulf Coast region (3,108.2 acres) is not clear. The area mined and disturbed reported in Texas (and readily available from http://www.rrc.state.tx.us/industry/_COALPRODthu2009.XLS) for 2008 was 5,633.3 acres.		
4.1.3.3.1.1	4-26	12-17	These statements are depicted as a general statement for mined lands across the nation, but based on the wording may only be applicable to		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			certain surface mining techniques used in specific regions of the country. For mining in the Gulf Coast region, there is no “traditional compaction of spoil” that would increase peak flows and flooding potential. In addition, the watershed response is highly dependent on vegetation and is variable over time as reclamation matures.		
4.1.4.1	4-30	38-41	The characterization of conclusions of the report by Rohasliney and Jackson (2008) is incomplete and as described in this text leaves out the main conclusion that channelization of streams from mining had little adverse affect to streams and biota.		
4.1.4.1	4-31	27-28	This first sentence of this paragraph amazingly ignores the protections afforded under SMRCA and State programs to minimize off-site impacts from mining activities.		
4.1.4.1	4-31	28-30	NPDES monitoring (or monitoring under approved state programs) is not performed on a quarterly basis as implied in this sentence. Reporting of the monitoring data is quarterly, but monitoring is done on a daily/weekly basis depending on the state program.		
4.4.4.1	4-34	2	The second footnote on the table provided in support of data for the final column of the table, “Range of Concentrations From Downstream of Mine Sites” is insufficient to make it clear that this data is only representative of water quality from mine sites in a particular region of the US and is not necessarily representative of all coal regions.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.1.4.1	4-38	12-13 & 17-18	This discussion is the final paragraph of a discussion of the impacts to streams from increased sulfates resulting from mining activities. They are inflammatory when taken together. The statement that “current and past coal mining practices have resulted in major adverse impacts to aquatic resources as some sites” is very broad and paints an unfair picture. Many mines have produced no such major adverse impacts. The statement that these “adverse impacts can and do occur with all mining methods and in all coal regions” is unsubstantiated.		
4.1.4.2	4-41	30-36	This generalized paragraph regarding fires at mines seems to be focused on fires in coal, but it is not clear from the way fire is characterized as an ongoing problem “at active and abandoned coal mines.” There is no evidence that mine fires are a problem at any mines in the Texas or the Gulf Coast region.		
4.1.4.3	4-47	15-16	The statement that reclaimed constructed soil is often a poor medium for plant growth is overbroad. In Texas, where topsoil and subsoil substitution is widely used, postmine “constructed” soils have consistently outperformed premine soils and hundreds to thousands of acres of postmine “constructed” soils have been classified as prime farmland soils by the NRCS.		
4.1.4.3	4-47	22-23	This statement is overbroad. To indicate that reclamation and revegetation programs “have often failed to restore ecological functions in the affected streams and uplands” is unsubstantiated and leaves		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			the impression that most reclamation is unsuccessful. This is not represented by on the ground results from all SMCRA programs.		
4.1.6.1.1.1	4-57	2	The employment number for underground mining in the Gulf Coast region is incorrect as the only underground mining is in Arkansas, representing an annual production of about 100,000 tons.		
4.1.6.1.2.1	4-58	14	The estimated personal earnings for underground mining in the Gulf Coast region is incorrect.		
4.1.6.1.4	4-61	1	The AML collection amounts for the Gulf Coast region are incorrect. For 2008 only about 100,000 tons were produced from underground mining in Arkansas. Total collections for the Gulf Coast region states (TX, LA, AR, and MS) as reported by OSM in their 2008 annual report were \$4,857,546.		
4.1.6.1.4	4-64	1 & 11	The data for the Gulf Coast region reported in these two tables appears to be incorrect for the Gulf Coast states of TX, LA, AR, and MS.		
4.1.6.4.2.1	4-67	6	In this paragraph the Gulf Coast region is characterized as comprising three states when it should be four states. This error is repeated in all analyses where the impacts by region are broken out separately in Chapter 4.		
4.1.6.4.2.3	4-69	24-29	There is no coal haulage in TX that is over public roads. Coal is hauled primarily by truck on private haul roads internal to the permit areas.		
4.5.1.3	4-197	30-32	The statement that “additional baseline data... would provide environmental protection by identifying high value resources...” is misleading. Current baseline monitoring is required to be of		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			sufficient detail to identify high value resources under current regulations.		
4.5.1.3	4-198	1	The values for the Gulf Coast region are incorrect. There is some underground production in AR and the statement on this page at lines 9 and 10 indicate that underground production in the Gulf Coast region will be the same under Alternative 5. In addition, the surface mining and total production listed do not equate to a 26.3% reduction in production assuming a baseline of 45.7 million tons per year for the Gulf Coast region.		
4.5.3.1.1.3	4-202	1	It is not at all clear what the data in this table is intended to show either from the table or the discussion in lines 3-21 on this page and 1-6 on page 4-203. The data seem to be pointing to some correlation of stream impacts to public and domestic ground water supply/use, but no sense can be made of this apparent correlation.		
4.5.3.1.2.1	4-203	14	The reference to a discussion associated with Alternative 1 and Table 4.2.3-5, which would be located under the discussion of Alternative 2, are incongruous.		
4.5.3.2.2.1	4-205	15	A number is missing after the word Alternative.		
4.5.3.2.2.1	4-205	9	There appears to be an errant open parenthesis.		
4.5.3.2.2.1	4-205	34-36	The final clause in this sentence does not appear to be complete.		
4.5.4	4-209	2-4	It is stated that perennial and intermittent stream channels would benefit under Alternative 5		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			(compared to Alternative 1). In Texas, however, if streams were re-establishment to the premine form, they would be constructed with steep, cut-bank slopes, which are highly vulnerable to erosion. Under the current scenario, streams are re-established with gentle, stable side slopes for overbank flow with low-flow sinuous pilot channels, resulting in more benefit to downstream receiving channels. It is too general to indicate that Alternative 5 is ‘hands down’ more beneficial with regard to channel form.		
4.5.4	4-209	15	Streams which are mined through in surface mining operations are restored or re-establish, rather than buried as indicated in this sentence.		
4.5.6	4-213	16	Although it’s estimated that a 1.6% overall increase of production will occur, a 1.7% overall increase is cited throughout Chapter 4.		
4.5.6.1.1.1	4-214	2	The underground employment number for the Gulf Coast region is incorrect.		
4.5.6.1.1.3	4-215	2	It is incomprehensible that an assumed 26.3% reduction in coal production in the Gulf Coast region could result in a positive employment change of over 1,000 individuals.		
4.5.6.4.2.1	4-222	13-15	There is limited haulage of lignite produced in Texas over commercial rail lines. Only one mine producing about 2.5 million tons per year ships over commercial rail lines.		
4.5.6.4.2.3	4-225	22-24	There is no coal haulage of lignite produced in Texas over public roads.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.7	4-249-270		<p>This entire section is unsupported by any data that would engender any confidence in the conclusions drawn regarding impacts to coal production from the implementation of Alternative 5. The author(s) has not provided any support for the elicitation process in terms of the subject matter expert (SME) qualifications, the percentage impacts applied to the various categories for each alternative assigned by the SME, and the data that was used to develop the values. Many of the examples provided are missing data so that reasonable analysis cannot be conducted. For example a key value used in developing the degree of impact would be listed in the table on page 4-263. Many of the values are missing so that a determination of the degree of impact is unsolvable. No reasonable review could be provided for this section due to it incompleteness and lack of supporting data.</p>		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Allen, Melissa M

From: Ogle, Kathy [KOgle@wyo.gov]
Sent: Wednesday, January 26, 2011 11:57 AM
To: Ehret, Paul
Cc: Corra, John; McKenzie, Don; Bilbrough, Carol
Subject: Wyoming's Comments on Chapter 4

Paul,

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

Kathy Muller Ogle

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

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

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

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

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

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

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

A new comprehensive analysis and major revision is needed.

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

Kathy Muller Ogle
Geological Supervisor
WyDEQ/LQD
122 West 25th Street
Herschler Building 3-W
Cheyenne, Wyoming 82002
(307) 777-7132
kmogle@wyo.gov

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.

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.

Summary of High Priority Deficiency Items from Chapter 3

The numbered items below were summarized from the following sections:

Section 3.4 Geomorphology and Fluvial Processes

Section 3.5 Topography

Section 3.18 Archaeology, Paleontology and Cultural resources

1. Organization and length. The EIS Team has discussed this issue with the consultants and a preliminary draft of the reorganized Chapter 3 is forthcoming soon.
2. Misrepresentation of regions or regional practice. State agencies and regulatory professionals are reviewing this document. We must be sure all statements about regional practice or regional statistics are accurate.
3. Misrepresentation of regulations. For example, excess spoil fills and refuse impoundments/fills have been discussed with respect to Approximate Original Contour. The provisions of AOC and AOC variances have not been adequately or properly described.
4. Inconsistent level of detail across regions. If this is an EIS that evaluates impacts on a proposed action that applies nationally the level of detail provided for all coal regions should be the same and not appear to be skewed to any one region e.g., Appalachian Basin. The EIS Team has discussed this issue with the consultants and a preliminary draft of the reorganized Chapter 3 is forthcoming soon.
5. The Chapter 3 material is organized in a way that highlights regional differences. Each resource section is further broken into specific regional sections. This level of regional detail is not carried forward into Chapter 4.
6. Material presented in Chapter 3 is for the most part hardly utilized in any Chapter 4 analysis. For example, Chapter 3 covers stream reconstruction techniques in great detail. There is no discussion of these techniques with respect to any provisions of the alternatives or predicted impacts in Chapter 4.
7. No description of the current mining and reclamation practice (e.g., topographic and fluvial reconstruction) under current regulations with respect to the Elements. It was assumed that this discussion would occur in the Chapter 4 Alternative 1 (No Action). Chapter 4 is deficient in this discussion as well.

Summary of High Priority Deficiency Items from Chapter 4

The numbered items below were summarized from the following sections:

General

4.0 Introduction

4.1 Alternative 1 (No Action)

1. Lack of clarity and necessary detail to support predictions generated using the presented methodology described in 4.7.
2. Environmental benefits and deficiencies of provisions of elements across alternatives including the existing regulatory conditions (No Action) are not discussed in sufficient detail.
 - i. For example, re-mining and stream restoration pre-law that occurs as a result of mining is an environmental benefit. Contrary to methodology approach where more coal mining equals more impact.
 - ii. Table 4.1.3-2. Under Alternative 5, preferred alternative (SPR Rule); 15 miles of stream are protected in AR. This number is very small relative to the burden and projected socioeconomic impact. The numbers presented in this table are problematic.
 - iii. Impact analysis is primarily projected as relative magnitude predictions to other alternatives (greater or lesser) and not described as actual predicted environmental benefits or deficiencies.
 - iv. Provisions of elements for each alternative are marginally discussed with respect to impact analysis or are discussed with Appalachian focus.
3. Concern regarding the adequacy of detail supporting dismissal of certain elements from analysis (e.g., bonding, green house gas (legal's), geology, soils, cultural).
4. The economic and hence environmental impacts of metallurgical coal were not considered.
5. Analysis is more heavily weighted to conditions and issues in very specific parts of Appalachia and not discussed across all coal producing regions.
6. Misrepresentation of regulatory provisions.
 - i. Text in alternatives suggests that under current rules all topsoil does not need to be salvaged and used on site.
 - ii. No action is described as not having regulation that ensures no changes to the hydrologic balance occur offsite.
 - iii. No action is portrayed as not supporting the use of native species
 - iv. Lack of clarity with respect to Mountaintop Removal Mines versus Steep Slope variances.
7. Insufficient detail or clarity regarding predicted impacts or projected shifts under the No Action Alternative. Confusion with predicted affects of 2008 SBZ rule as well as shifts occurring that may or may not a function of 2008 SBZ.

Richmond, Mike W. "Mike"

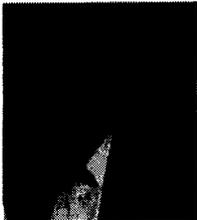
From: Boyles, Dennis L.
Sent: Friday, July 16, 2010 12:43 PM
To: Richmond, Mike W. "Mike"
Subject: Polu Kai Services - Aloha

A native American, native Hawaiian, and disabled vet owned company.



Sean P. Jensen, President

Sean P Jensen founded Polu Kai Services, LLC in 2003. Polu Kai Services, LLC began as a one person firm estimated to grow to 100 full time employees by the end of 2010....



Jose Sosa, Executive Vice President

Jose J. Sosa, PE, CIH, CGC has served as the Executive Vice President of Polu Kai Services, LLC for two years in our Southeast Headquarters in Tampa, Florida

Gardner, Linda R. (Contractor)

From: Lambert, Butch (DMME) [Butch.Lambert@dmme.virginia.gov]
Sent: Tuesday, November 09, 2010 2:41 PM
To: Ehret, Paul; Craynon, John
Cc: gconrad@imcc.isa.us1; Vincent, Les (DMME)
Subject: 2010-11-09 EIS 3.6 Comment form
Attachments: EIS 3.6 Comment form_Combined.doc

Gentlemen,
Please find attached the Virginia comments on EIS 3.6 Surface Water..

Comment Form

Title of Document	EIS Draft 3.6 Surface Water
Contact Information	
Name	Bradley C. Lambert
Telephone Number	(276) 523-8145
Email	Butch.Lambert@dmme.virginia.com

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
3.6			General comment: This surface water section describes similar water quality changes attributed to mining among different regions of the country. However, the Appalachian section is described in more detail and the implication is that the changes in water chemistry due to coal mining are more problematic in the Appalachians. Similar trends in water chemistry changes are practically dismissed for the other regions. This disparity should be addressed.		
3.6.0	3-1	20	Spelling "...are well document█..."		
3.6.0	3-1	21	Spelling "...chapter are █ journal..."		
3.6.0	3-2	38-39	Reword the following "...land disturbance activities and in mines that █ sustainable mining practices..."		
3.6.0	3-2	38	This sentence implies that "other" mining and large land disturbing operations take additional measures for peak flow attenuation/matching. What are these measures and does this statement suggest additional measures are necessary for coal mining? If so, this statement should more clearly state that these. This statement does not take into consideration the scale of the mining operations or even the type of mining operations. In Virginia where most mining is remining often sediment control basins are relatively small on bench basins that never discharge. There is no affect on peak flows from these type basins or often small embankment basins. There is considerable difference between a 2,000 acre mountaintop removal mine that may have a 40 million yard valley fill and a 125 acre second cut contour mine or highwall miner operation. This statement is too broad. The statement also implies that		

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			any change in peak flow is adverse; that is incorrect. It is the scale of the peak flow increases that would matter. A relatively small rainfall event may have a small peak flow increase that does not even become a bank full event. How is that adverse?		
3.6.1.2	3-8	7	Why was only data from stream gauge stations in Pennsylvania, Maryland and West Virginia used? This data is readily available in the other states. Throughout the document it is apparent that no data from Virginia was used to develop this EIS and as such how can it even be considered as being valid for mining in Virginia.?		
3.6.1.2	3-8	16-18	The narrative below Figure 3.6-5 states "It is worth noting that the results from the curve can be subject to large errors if data from a stream with a drainage area greater than 90 mi ² or a stream outside of the study area is used." This is an answer to the question posed in the comment above. This data is not valid for any mining operation in Virginia.		
3.6.1.2	3-8 – 3-11	all	Same comments as above no Virginia, Tennessee, Kentucky, etc. data is used.		
3.6.1.2.1	3-12	19-20	Tense "The description and sequence of surface mining methods ■...and consist ■..."		
3.6.1.2.1	3-12	25	No rock chimney drains are used in Virginia. Is this term intended to be something else?		
3.6.1.2.1	3-12	30 - 34	In Virginia for 2008 and 2009 the permits that had forestry as a post mining land use had 100% FRA requirements.		
3.6.1.2.1	3-13	24-36	This paragraph makes several statements regarding hollow fill effects on stream flow without qualifying the fill size, construction characteristics, type of rock in the fill, or placement of the fill within head of hollow/ephemeral reaches, intermittent reaches or perennial reaches of streams. Each of these characteristics of the fill heavily influence whether stream flows will be affected. These items should be addressed in the narrative.		
3.6.1.2.1	3-13	24-36	There is no mention in this section of the influence of abandoned deep mine discharges on water quality and whether the effects of abandoned deep mine discharges were considered in the stream quality studies.		
3.6.1.2.1	3-13	24-36	There is no mention in this section of the influence of pre-SMCRA mining on existing water quality.		

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3.6.1.2.1	3-13	24-36	There is no differentiation of conductivity arising from AMD versus conductivity arising from non-AMD discharges and the difference in dissolved constituents from these differing sources. The dissolved ions would be different and the toxicity would be different.		
3.6.1.2.1	3-13	27	Tense "The water that does [REDACTED] into the fill enters..."		
3.6.1.2.1	3-13	28	Water only enters the fill from coal seams if in fact the fill is placed over mined coal seams and then only where the dip of the coal is toward the fill. This reads like water will always enter the fill from the coal seams all the way around the valley. This is not true. If the coal seam is dipping in toward the mountain away from the fill then no water (or very little water) will infiltrate into the fill.		
3.6.1.2.1	3-13	32-36	This should be better explained. Very large fills can attenuate peak flows by holding or storing water in the fill and releasing it over time thus converting intermittent streams into perennial or near perennial streams. The last sentence in this paragraph is too broad based. This is not always the case. In Virginia there are valley fills that are relatively small. For example between January 1, 2000 and August 17, 2009 327 new valley fills were permitted in Virginia. Of these 54 were 100,000 cubic yards (cy) or less with the smallest being 2,000 cy. 206 of the 327 fills were for 1,000,000 cy or less.		
3.6.1.3	3-13	40	It is ridiculous that only ten sites were used for TDS and Specific Conductance. There have been numerous studies and numerous sites evaluated for these parameters and some were over time. This is a too limited data set to be meaningful		
3.6.1.3	3-14	5 - 9	The draft states that the Specific conductance ranged from 10 to 26,000 $\mu\text{S}/\text{cm}$ but Table 3.6-6 shows a maximum dissolved solids value of 892 mg/L. The 26,000 $\mu\text{S}/\text{cm}$ should have a dissolved solids value higher than the maximum of 892 mg/L shown in Table 3.6-6. Is the 26,000 $\mu\text{S}/\text{cm}$ correct? It would be helpful to list the dissolved solids v. the conductivity in a table as there are only ten sites were sampled.		
3.6.1.3	3-15	1	The validity of Figure 3.6-6 is highly questionable given the limited data set. Were any Virginia sites sampled? The correlation between Dissolved Solids and Specific Conductance is questionable. It appears to be much higher than that usually shown in more extensive studies.		

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			Correlations of less than 0.70 are normally used; not 0.79 as shown in Figure 3.6-6.		
3.6.1.3	3-13 – 3-20	all	No Virginia data is included. Virginia Tech has published research in this area with more extensive and relevant data than is found in this document. Virginia Tech research indicates that the problematic ions in TDS/Conductivity are sulfates and bi-carbonates. Research shows that benthic communities in the Virginia coalfields are not affected at the levels proposed by the U.S. Environmental Protection Agency but rather at higher levels. The preliminary research shows that weathered spoils have lower TDS/Conductivity and thus lower sulfates and bi-carbonates Proper spoil handling techniques can address much of this problem area similar to spoil handling of acidic spoil in mining. Why was a literature search not performed and data specific to each state used? Depositional geology in Virginia is markedly different than that of West Virginia.		
3.6.1.3	3-19 3-20	all	As far as selenium goes again no Virginia data is used. Depositional geology in Virginia is markedly different than that of West Virginia		
3.6.8	3-59	15	...can range from [REDACTED] to severe...		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Allen, Melissa M

From: Dana Dean [DANADEAN@utah.gov]
Sent: Tuesday, October 12, 2010 11:14 AM
To: Craynon, John; Pizarchik, Joseph G; Ehret, Paul
Cc: April Abate; Daron Haddock; Ingrid Campbell; James Owen; Jim Smith; Joe Helfrich; John Baza; Kevin Lundmark; Peter Brinton; Priscilla Burton; Steve Christensen
Subject: Utah's Comments - Chapter 2
Attachments: SPREISCh2_UDOGMComments_final.DOC

Director Pizarchik,

I have attached Utah's comments regarding Chapter 2 of the Stream Protection Rule Environmental Impact Statement.

We have dedicated as much time as possible to these comments, but we feel that our comments were somewhat limited by the short amount of time allowed for review.

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

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

Please let me know if you have any questions or concerns regarding our comments, and when the reconciliation meeting will take place.

Thank you,

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

Comment Form

Title of Document	Stream Protection Rule EIS Chapter 2
Contact Information	
Name	State of Utah (C/o Dana Dean or Peter Brinton)
Telephone Number	801-538-5320 or 801-538-5258
Email	<u>danadean@utah.gov</u> or <u>peterbrinton@utah.gov</u>

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General comments			<p>Utah Division of Oil, Gas, and Mining (UDOGM) thinks that more specificity and detail will be required in order to evaluate further EIS chapters.</p> <p>While UDOGM has some significant comments and suggestions for Alternatives 2 through 4, a thorough evaluation of Alternatives 2 through 4 was not performed due to time constraints. The other alternatives, including especially Alternative 5, were addressed more fully. Some components from these alternatives which are included in the Proposed Action (Alternative 5) are commented on in Alternative 5 sections.</p> <p>R645-301-356.300 UDOGM has concerns about the requirement to wait for 2 years after the last augmented seeding before removing siltation structures (sediment ponds) due to revegetation challenges in semi-arid/arid regions. Redisturbing reclaimed areas in order to remove siltation structures can cause undue damage and prolong bond release because of setbacks in vegetation establishment.</p> <p>Based on the Denver meeting with Director Pizarchik, we understood that this concern, which prompted changes in 40 CFR 434 (adding subpart h – Western</p>		

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			Alkaline Coal Mining in 2002), was to be addressed in this EIS.		
Table 2.1	2-29	---	While Table 2.1 has been helpful as a reference to compare alternatives, some significant inconsistencies between it and the text of the document were found. For example, the definition of material damage under Alternative 5 on the table is lacking details that are included in the text.		
2.2.2	2-2	9	Need the word "to" between "opportunity" and "discuss"		
2.3.1	2-3	21-25	Because the statement that "none of the selections necessarily demands another" is not accurate for all alternatives described for the elements, the terms "element alternatives", "full suite alternatives" and the "proposed action" would be less confusing than the cafeteria example. For example, alternatives 2 – 5 for Monitoring During Mining and Reclamation (Element 6) all refer to baseline sampling (Element 2).		
2.3.2	2-3	30-31	Readers would benefit by a clear identification of how the 11 elements evaluated in this EIS differ from the 11 elements described in the NOIs. For example, the element "Fish and Wildlife Protection and Enhancement" is new, and "Revegetation & Topsoil Management" replaces "Reforestation".		
2.3.2.1	2-4	13	Not all elements or their associated alternatives may be evaluated independently of other elements/alternatives. See comment for Section 2.3.1.		
2.3.2.1	2-4	15-20	This discussion appears inconsistent with the presentation of alternatives in Section 2.4. Here, there appear to be four alternatives (not five) under each element from which the proposed action is identified: Alternative 1 (No Action), Alternative 2 (most protective), Alternative 3 (less protective), and Alternative 4 (least protective).		
2.3.2.2	2-4	31-32	This sentence appears incomplete and has been difficult for us to understand. Rewording of it would be helpful.		

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2.3.2	2-4	3-8	<p>UDOGM disagrees that there will be no “identifiable impact on the environment” caused by OSM’s decision to remove the element addressing “Financial Assurance for Long Term Discharges of Parameters of Concern.”</p> <p>UDOGM believes OSM should move forward with rulemaking to address Financial Assurances for Long-Term Discharges of Pollutants (Principle Element #10 from the NOIs), and that these elements should be addressed in this EIS. The text at Section 2.3.2 of the draft Chapter 2 suggests that there is uncertainty as to whether OSM will address financial assurance for long-term discharges of pollutants in the contemplated rulemaking.</p> <p>Stating that “the Performance Bonds and Financial Assurance elements” are “risk-reducing activities” and have no “identifiable impact on the environment” is missing the basic need for this element to be included in the rulemaking. By not providing the regulatory authorities a frame-work or tool to compel Operators to provide the financial assurance to cover potential long-term costs incurred from treating post-mining discharge contamination, the probability of environmental damage is raised significantly. If an Operator decides to “walk away” from a site with perpetual discharge contamination, and the bonding is inadequate to cover in perpetuity treatment costs, either tax payers will incur the costs or (given the current economic conditions of most states in this country), it is entirely possible that treatment of the contaminated discharge could cease, causing a direct and immediate impact to the environment.</p>		
2.4.2	2-5; 2-6	34-36; 1-7	Include the sampling interval here, as it is in Section 2.5.		

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2.4.2	2-5	35	The phrase "documentation of sediment" is unclear as to what the rule is asking of permittees and specifically why it is asked (which would be helpful). Are they being asked to quantify the baseline depth and particle size of existing sediment in a stream channel, and the stream length over which it exists? Estimates of erosion for various magnitude storms? Negative biological consequences of excessive sediment? This phrase needs further explanation.		
2.4.2	2-6	5-7	Baseline data collection relative to ephemeral streams, for which there is no discussion here, has been problematic in the State of Utah. Any discussion of baseline data collection should include requirements/guidance on characterizing ephemeral streams.		
2.4.3	2-6	14-15	"is [required] to develop"		
2.4.3	2-6	15-16	In some instances, it may be inappropriate to set material damage criteria solely on federal and state water quality standards. There have been instances in Utah where baseline data collection has produced water quality values that are in excess of state and federal water quality standards prior to any mining activity. OSM should include some language in the rule to address when background conditions exceed water quality standards.		
2.4.3	2-6	22-23	UDOGM supports excluding ephemeral streams from the definition of material damage. UDOGM also recognizes that ephemeral streams can contribute to the degradation of water bodies that they discharge into.		
2.4.3	2-6	8-23	Currently, material damage is defined solely within the context of subsidence and subsidence control (30 CFR Ch. VII 784.20 and 817.121). Such a definition does not take into account adverse impacts to hydrologic resources from first mining practices (i.e. no planned subsidence). First/development mining can dewater		

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			aquifers and springs as well as alter ground water flow directions resulting in significant adverse impacts. However, such impacts would not be considered "material damage" because they were not produced by subsidence. If such impacts cannot be considered "material damage", the enforcement options afforded regulatory authorities is severely limited (i.e. if there is no subsidence, there can be no material damage).		
2.4.4	2-6	27-28	In Utah, this statement does not embody the "No Action" alternative, since Utah now follows the "1983 SBZ[s] prohibition" (lines 34-35)		
2.4.5	2-7	10-11	For clarification, ephemeral streams should also be included specifically here.		
2.4.6	2-7	21-23	Regarding Alternative 2, what good is quarterly monitoring if the data are only reviewed at mid-term and permit renewal? Requiring review at permit renewal could delay, complicate, or even nullify right of successive renewal.		
2.4.7	2-7	38	Has the word not been inadvertently omitted from the sentence "current OSM regulations <u>do</u> require Corrective Action Thresholds?"		
2.4.7	2-8	1-3	Impacts from non-mining activities could impose a great financial burden on a mine, or even force a Cessation Order, but impacts resulting from the Proposed Action and other Alternatives will be addressed in Chapter 4.		
2.4.7	2-8	11	"... prior to reach[ing] material damage"		
2.4.9	2-9	14	"...the regulatory [agency] would not..."		
2.4.10	2-9	22-23	Reforestation of pinion-juniper communities - which are the native tree communities in a number of coal fields in the West - to the level of mature trees could take decades.		
2.4.10	2-9	22-23	"..establishes a bonding requirements that are triggered..."		
2.4.10	2-9	24, 27-28	A climax community of pinion-juniper or other conifers is not necessarily the preferred option. Grasses, forbs,		

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			and deciduous shrubs and trees are often preferable to evergreens due to lower rates of water consumption.		
2.4.11	2-10	9-10	Here, ephemeral streams should be specifically stated as not having "enhancement requirements".		
2.5.1.1	2-10	34-35	The current definition also does not include physical channel characteristics and function (fluvial geomorphology)		
2.5.1.2	2-11	17	Should be "quantity" not "quality"		
2.5.1.2	2-11	25	Should be "quantity" not "quality"		
2.5.1.2	2-11	32	"This requirement includes a chemical analyses analysis of the coal..."		
2.5.1.4	2-12	8-10	The latest version of the Federal Rules [Revised as of July 1, 2010] does not seem to contain this requirement: "In addition, the Applicant must demonstrate to the regulatory authority that avoiding disturbance is not reasonably possible."		
2.5.1.4	2-12	10-11	technology currently available (BCTA BTCA) "		
2.5.1.4	2-12	10-11	BTCA isn't in the acronym list, though it is defined here		
2.5.1.6	2-12	24	Should be "quantity and quality", not just "quality", as the current regulations require that monitoring programs identify monitoring parameters for both quality and quantity of surface water and groundwater based on the PHC.		
2.5.1.6	2-12	27	"are pH, [total] Fe, [total] Mn, and TDS..."		
2.5.1.6	2-12	27-28	"...or flow [and TSS] for surface water."		
2.5.1.9	2-13	9	"..there [is] a host of requirements,"		

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2.5.2.1	2-14	7-9	Although this would be very interesting information, its value in enforcing SMCRA is not evident, and it would probably detract from the obvious issues that relate to hydrology, biology, and water chemistry.		
2.5.2.2	2-14	25-30	This list of baseline parameters seems reasonable except that TDS, pH, temperature, dissolved oxygen and conductivity should be included. For the Western U.S., silica is of little value, and labs now report -HCO ₃ as CaCO ₃ . Boron and Oil & Grease might also be useful parameters for baseline.		
2.5.2.2	2-14	25-30	Answers to the following questions should be included: How would ephemeral streams that carry a high sediment load be effectively and consistently monitored for water quality? How would inaccessibility due to snow cover or other extenuating conditions be accommodated for the "evenly spaced" requirement?		
2.5.2.2	2-14		Definitions for "continuous" (e.g., hourly, daily) and "where practicable" should be included.		
2.5.2.3	2-15	4-12	If biological function impairment is included in the definition of material damage, biological baseline data for all stream types including ephemeral must be collected.		
2.5.2.3	2-15	7-10	Before analysis of impacts associated with Alternative #2 can occur, the definition of "impairment" needs to be made clear.		
2.5.2.3	2-15	10	"Impaired", depending on its definition, is an unrealistic standard for material damage. Streams can be "impaired" yet still function and support all pre-impairment uses.		
2.5.3.6	2-19	13-14	The wording of these passages is confusing. How can the permittee demonstrate the restoration of stream community without monitoring data? (Do you mean that monitoring does not need to be		

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			formally reported until the six month period starts, or do you mean something else?)		
2.5.3.10	2-21	3-22	Reestablishing the climax native plant community is very difficult in areas that have less than 26 inches of rain per year and consist of slow growing species. These conditions characterize much of the western U.S., including Utah. For example, a pinyon/ juniper plant community may require much longer than the current ten year liability period to reach full establishment. In this example, common to Utah and other western states, the climax community is often not necessarily the most desirable for wildlife habitat management purposes, and pinyon- juniper plant communities are often treated to remove climax community trees in order to promote more sagebrush/grass areas for wildlife.		
2.4.1	2-5	26	The EPA and USACE "waters of the U.S." concept would not lead to an effective definition, and could, based on its history lead to obfuscation, confusion, and litigation. 40 CFR 230.3(s) specifically includes intermittent streams but does not mention ephemeral streams. The exclusion of ephemeral streams from this definition might be a positive feature.		
2.5.4.6	2-24	7-8	The phrase "permanently impacted" as proposed in the material damage definition for this Alternative (Alt. 4) is subject to interpretation, including the view that material damage may be/should be measured by the biological conditions of the stream. Under this interpretation, monitoring also must include biological sampling to determine impact.		
2.5.4.10	2-24, 25	29-35, 1-3	Requiring an RDPC concept as a success standard would be optimal because it would allow regulators and operators to select the best plant community for wildlife habitat to put in place after mining. This would allow for enhancement of the area when the original plant community was not necessarily the best for wildlife or the land use.		

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2.5.4.10	2-25	4-6	<p>In areas with less than 26 inches of annual precipitation (which characterizes a number of coal producing areas of the western U.S.) three growing seasons is not a long enough period of time to determine if the ground cover can persist. Even if the site meets the success standard in year three, it may not be stable enough to withstand climatic events such as drought. On the other hand, the current ten year liability period is too long in some cases.</p> <p>Perhaps an alternative would be for the operator to show four or five consecutive years of ground cover equal to or exceeding the success standard. This would allow operators to apply for bond release on sites that are well established before ten years, but also ensure that a stable, permanent ground cover has been established.</p>		
2.5.5.1	2-25	29-30	<p>OSM needs to provide the <i>actual proposed definitions</i> in order for a fair assessment of the impacts to be possible.</p> <p>The proposed alternative lacks critical details necessary to evaluate the effects of the proposed definitions on the Utah Coal Regulatory Program:</p> <ul style="list-style-type: none"> • What are the proposed “expanded” definitions? • What specific “biological, hydrological and physical” characteristics will be factored into the definitions? • Must biological, hydrologic and physical characteristics all be present for a classification to be met? In Utah, some streams which are unarguably perennial from a hydrologic perspective naturally lack biological communities normally indicative of a perennial stream due to either chemical or physical habitat limitations. • Will definitions vary by region? i.e., will Utah and other western states be forced to apply stream definitions which are developed for Appalachian waterways and 		

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			<p>therefore not appropriate for our hydrologic systems?</p> <p>Utah is concerned that, in their attempt to refine the stream definitions, OSM may be introducing more ambiguity which will complicate enforcement and provide ground for more legal challenges for new permit applications. A practical example of this is our comment at Section 2.5.5.2, page 2-26, lines 5-6. Clear criteria/standards must be established (or guidance for establishing said standards) for the biological, hydrological and physical characteristics that will ultimately define the stream.</p>		
2.5.5.1	2-25	30-32	UDOGM supports OSM's proposed elimination of the 1 square mile criterion.		
2.5.5.2	2-26	2-6	<p>One year of data collection provides no information on annual variability. Utah guidance currently suggests two years of baseline data collection for surface water and groundwater. The proposed action is therefore less stringent with respect to the duration of baseline data collection.</p> <p>The water sampling appears to only include streams – what about groundwater, including springs? In Utah coal mining regions, springs are vulnerable resources which are heavily relied upon, and in some cases provide the principle source for stream flow. Water level measurements should also be included for surface water bodies.</p> <p>Whether to require baseline data collection for ephemeral streams is a contentious topic for the Utah Coal Regulatory Program.</p>		
2.5.5.2	2-26	5-6	As Alternative #5 does not require sample collections from ephemeral streams, clear guidance should be provided as to what information/criteria/conditions define an ephemeral stream.		

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			<p>Given the natural "flashy" nature of ephemeral drainages in the Book Cliffs sub-area of the Utah coal fields, which typically flow only in response to major rain events and snowmelt, sampling ephemeral drainages is simply not practicable from a safety, timing, or data quality perspective. Nonetheless, ephemeral drainages may in some cases be situated such that sampling is possible and baseline data collection is warranted. Utah therefore supports OSM in not requiring baseline data collection for all ephemeral streams; however, we would reserve the right to require baseline data on key ephemeral drainages in some instances on a permit-specific basis.</p>		
2.5.5.2	2-26	2-11	<p>Further clarification should be provided for baseline data requirements for groundwater systems. In Utah, typical ground water systems are small, isolated/perched systems; not regional or contiguous aquifers. In order for a Permittee to characterize these systems (i.e. install a minimum of 3 monitoring wells for each groundwater system), access to remote, rugged, roadless and high elevation sites would be required. In many instances, strict enforcement of the baseline requirements for groundwater would prove cost prohibitive for many coal-mining operations while doing little to protect and enhance the hydrologic balance.</p>		
2.5.5.3	2-26	13-18	<p>The definition of material damage is not clearly articulated in this section. There appear to be two components: "degraded biological conditions" and "no longer be used for designated use". OSM needs to provide a concise and specific proposed <i>definition</i> of material damage in order to make a fair assessment of what the environmental impacts would be.</p> <p>A material damage definition should take into account the pre-mining condition of a hydrologic resource. For example, Utah has been challenged in instances where</p>		

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			<p>the baseline data for a drainage demonstrates a background TDS concentration of 3,000 mg/L; however, the established water quality standard is 1,200 mg/L.</p> <p>The language in Section 2.5.5.3 is too vague, and enforcement thereof would be difficult and wide open for legal challenges. The language in Section 2.5.2.3 (Definition of Material Damage – Alternative 2) at least establishes that “impairment” is based on state water quality standards or use designations. Water quality standards are enforceable; generalities like “degraded biological conditions” invite legal challenges.</p> <p>The definition of Material Damage to the Hydrologic Balance under Alternative 5 on Table 2-1 is even more vague, as it could be interpreted that <i>any</i> adverse impact – regardless of the magnitude – would designate as material damage.</p>		
2.5.5.3	2-26	19-22	<p>Material damage is defined solely within the context of subsidence and subsidence control (30 CFR Ch. VII 784.20 and 817.121). Such a definition does not take into account adverse impacts to hydrologic resources from first mining practices (i.e. no planned subsidence). First/development mining can dewater aquifers and springs as well as alter ground water flow directions resulting in significant adverse impacts. However, such impacts would not be considered “material damage” because they were not produced by subsidence. If such impacts cannot be considered “material damage”, the enforcement options afforded regulatory authorities is limited (i.e. if there is no subsidence, there can be no material damage).</p>		
3.5.5.3	2-26	19-20	<p>The Proposed Action material damage definition only takes into account adverse impacts on perennial and intermittent streams (i.e. surface water). In Utah, ground water resources (e.g. seeps/springs) are as</p>		

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			important as surface water resources. In fact, the UDOGM has only issued one finding of material damage, and it was associated with the dewatering of a spring associated with subsidence. The definition of material damage should also be applicable for groundwater.		
2.5.5.3	2-26	19-20	The 'material damage' section should provide a detailed discussion or process for establishing a numerical or statistical threshold by which regulatory authorities can make a finding that a hydrologic resource has been materially damaged.		
2.5.5.3	2-26	20	Guidance should be given to the regulatory authority as to how to determine which water quality parameters are recommended for determining whether material damage to a hydrologic resource has occurred.		
2.5.5.3	2-26	19-20	The 'material damage' discussion should identify when it's appropriate for a regulatory authority to make a finding that material damage has occurred. Does the regulatory authority make a material damage finding immediately upon determining that a water quality, water quantity or designated use threshold has been exceeded or must these thresholds be exceeded for some period of time? Should the regulatory authorities allow the Permittee time to mitigate/repair a hydrologic resource before making a finding of material damage and if so, how much time should Permittees be reasonably allowed?		
2.5.5.4	2-26	28	Is the intent here for the post-mining use and ecological function to be the same as pre-mining conditions? Or are no effects to be allowed during mining and post-mining?		
2.5.5.4	2-26	32-33	Please clarify whether "not reduce biological conditions" refers to outside the permit area or both inside and outside the permit area. This is another example of OSM needing to provide more clear language in order for Utah to evaluate the environmental impacts		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>associated with the proposed rulemaking.</p> <p>For example, in Utah the majority of mining operations are underground with surface facilities located in steep and narrow canyons. In order to provide sufficient area for surface facilities and in order to protect "undisturbed" drainage from above the surface facilities, culverts are used for stream bypasses. These culverts could easily be construed as "reducing biological conditions", although only within the permit area.</p>		
2.5.5.4	2-26	23-41	<p>Further clarification as to what 'mining activity' is would be helpful. Would 'mining activity' include underground coal-mining operations? How would a regulatory agency "ensure that intermittent and perennial streams continue to have necessary amounts of base flow" without exploring potential impacts from underground mining activity?</p> <p>One of the most contentious and difficult issues that the State of Utah contends with is the undermining and impact to springs/seeps. These springs/seeps provide the base flow to these intermittent and perennial streams of which local communities rely on for their culinary water. Underground mining operations have impacted springs/seeps which in turn, have caused reductions in recharge to intermittent and perennial streams. The Activities In or Near Streams element should clarify/define what is considered mining activity (i.e. strictly above ground or extending to the underground mine workings as well).</p>		
2.5.5.5	2-27	6-7	<p>Guidance should be provided that identifies the level of information/detail that would be necessary for a regulatory agency to make a finding that the Permittee has demonstrated that a stream's form and function could be restored.</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.5.5	2-27	6-7	Further clarification is needed as to whether "mining through streams" refers to surface mining solely or whether underground mining would be considered as well.		
2.5.5.6	2-27	15-21	The wording of these passages is very confusing to us. We don't know how to comment. Please add clearer wording. How can the permittee demonstrate the restoration of stream community without monitoring data? (Do you mean that monitoring does not need to be formally reported until the six month period starts, or do you mean something else?)		
2.5.5.7	2-27	25-27	Guidance as to how a regulatory authority would set Corrective Action Thresholds would be necessary in order to adopt Alternative #5.		
2.5.5.10	2-28	19-27	Reestablishing the climax native plant community is very difficult in areas that have less than 26 inches of rain per year and consist of slow growing species. These conditions characterize much of the western U.S., including Utah. For example, a pinyon/ juniper plant community may require much longer than the current ten year liability period to reach full establishment. In this example, common to Utah and other western states, the climax community is often not necessarily the most desirable for wildlife habitat management purposes, and pinyon- juniper plant communities are often treated to remove climax community trees in order to promote more sagebrush/grass areas for wildlife.		
2.5.5.10	2-28		R645-301-356.300 UDOGM has concerns about the requirement to wait for 2 years after the last augmented seeding before removing siltation structures (sediment ponds) due to revegetation challenges in semi-arid/arid regions. Redisturbing reclaimed areas in order to remove siltation structures can cause undue damage and prolong bond release because of setbacks in vegetation establishment. . Based on the Denver		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			meeting with Director Pizarchik, we understood that this concern, which prompted changes in 40 CFR 434 (adding subpart h – Western Alkaline Coal Mining in 2002), was to be addressed in this EIS.		
2.5.5.11	2-28	29	Under the Proposed Action, enhancement activities will be required “when the mining operation results in stream impacts” (Alternative 2 – Section 2.5.2.11). Neither “mining operations” nor “stream impacts” are defined by SMCRA. Will “mining operations” include subsidence from underground coal mining? Is “stream impacts” the same as material damage or does this mean <i>any</i> impact? OSM needs to provide a more specific description or use defined terminology in order for an evaluation of the Proposed Action to be possible.		
2.6.1	2-31	32-36	The State of Utah supports OSM efforts to expressly require operators to provide bonding to cover long-term water treatment, but believes OSM should include this action in this EIS.		
2.6.1	2-32	1-2	OSM is apparently considering allowing Phase III Bond Release in arid and semiarid areas even if “adverse trends are detected”. As an arid and semiarid area by definition, Utah has concerns that changes being considered will not safeguard the environment and will weaken our ability to ensure successful reclamation following coal mining activities.		
2.6.2	2-32	16-28	UDOGM supports OSM efforts to codify a requirement for operators to post financial assurance (e.g., trust funds) adequate to treat long term pollutant discharges.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Allen, Melissa M

From: Calle, Marcelo
Sent: Wednesday, October 13, 2010 10:07 AM
To: Ehret, Paul
Attachments: EIS MCR Comment Chap 2_mcdisposition.docx

Attached are my current MCR comments/dispositions. Most I suggest forwarding. Some are still outstanding for discussion. I am pretty sure we have redundancies of comments. Many of my comments were consistent with MCR.

Marcelo Calle
Hydrologist

Office of Surface Mining Reclamation and Enforcement
Western Region
1999 Broadway, Suite 3320
Denver, CO 80202-3050

mcalle@osmre.gov
(303) 293-5035 Office
(303) 293-5032 Fax

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Comment Form

Title of Document	Draft EIS Chapter 2
Contact Information	
Name	Erv Barchenger
Telephone Number	618-463-6463 x 5101
Email	MCR Comments

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
General			Throughout the document, they use acronyms without first spelling them out (e.g. EIS, OSM, SMCRA, etc.). Once a term is defined and assigned an acronym – stick to it! (dd)	YES	Review document for consistent use of Acronyms.
General			Throughout the document, they capitalize words/phrases that do not need to be capitalized. dd & bl	YES	Review document for consistencies in capitalization.
General			The document lacks organization, clarity, and purpose. The initial discussions of the elements and alternatives (Sections 2-1 until 2.5) are completely confusing. dd	YES	S
2.1	2-1	4-20	The entire Introduction is hard to follow. At a minimum, they need to list the 11 elements early on to help provide some degree of clarity. The constant reference to “Elements” in this section and throughout without defining what the elements are is completely confusing. dd		Description of Elements as defined by NOI will be included in the Introduction.
2.1	2-1	6-7	“ <i>These provisions do not....</i> ” – I have no idea what this sentence is trying to get at. dd		Replace ‘several provisions’ with ‘requirements and performance standards’
2.1	2-1	8-9	There appears to be a word(s) or punctuation missing. As written, the sentence does not make sense. dd		Revise sentence – “This EIS develops a range of alternatives for each Element. The range of alternatives includes the No Action alternative and four other alternatives that represent a hierarchical range of proposed stream protection measures. The ranges of alternatives for each

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
					element are then used to create logical groupings that represent a range of hierarchical Full Suite Alternatives that be analyzed."
2.2.1	2-1	31-33	Although not part of the official scoping process Info on when, where, and who participated would be useful and increase transparency. bl	No	This information is included in the Appendix.
2.2	2-1	26-27	No mention anywhere in this document of surface effects of underground mining. kg	Yes	Insert - "... might be adversely affected by surface coal mining and the surface effects of underground mining activities."
2.2	2-1	27-28	There are no current regulations that only affect coal mining operations in the Appalachian region. All OSM regulations apply nationwide. kg	Yes	Strike last sentence - "Initially, OSM limited the scope..."
2.2.2	2-2	6	We should provide a citation for the MOU and include it in ref. bl	Yes	Include reference for the MOU in text. Included in Appendix.
2.2.2	2-2	9	Missing word - "... provided OSM with an opportunity to discuss..." dd	Yes	Insert "to" as per comment
2.2.3	2-2	13	[REDACTED]	[REDACTED]	[REDACTED]
2.2.3	2-2	20	How many is many - a breakdown of the broad comment categories would be useful or if covered elsewhere in the EIS, reference that section. Seems that many of the comments also proposed that the mountaintop issues be dealt with regionally. bl	Yes	Insert - The complete compilation of submitted comments are contained in Appendix (?). Last sentence of paragraph.
2.2.4	2-2	26	"affection"? I believe the correct word is <u>affecting</u> . pe & dd	Yes	Replace 'affection' with 'affecting'
2.2.6	2-3	7 & 8	This sentence about inviting public comment in a section titled "Internal Review" seems misplaced. pe	Yes	Strike last sentence of this paragraph.
2.3.1	2-3	13	Needs to be consistent with numbers - here "eleven" is spelled out, but in 2.2.4, they used "11". dd	Yes	Review document for consistency of number (text versus numeric).
2.3.1	2-3	21-25	[REDACTED]	[REDACTED]	[REDACTED]
2.3.2.2	2-4	28	"n" action alternative. Should be <u>no</u> action alternative. pe & kg	Yes	Insert "...the no action alternative..."
2.3.2.2	2-4	32-36	[REDACTED]	[REDACTED]	[REDACTED]

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.4.5	2-7	8	Bullet #3 includes the words "activities near". As activities near streams IS NOT "Mining Through Streams" it should not be include in this Element .		pe
2.4.7	2-7	38	Should read "Current regulations do not require..." kg	Yes	Apply changes per comment
2.4.7	2-8	11	Should read "...prior to reaching ..." kg	Yes	Apply changes per comment
2.4.8	2-8	15	A word seems to be missing; "dealing <u>with</u> fill material. If the intent is "excess" fills, that word should perhaps to added also. pe	Yes	Insert -"... dealing with fill material.." per comment Insert -"... for dealing with fill materials including excess spoil and coal mine waste..."
2.4.8	2-8	17	AOC is used as an abbreviation but is not spelled out until 2.4.9. kg	Yes	Insert "Approximate Original Contour (AOC).." per comment. Correct all others following
2.4.8	2-8	22	Remove excess. Fill does not always have to be excess. bl	Yes	Strike "excess" per comment
2.4.8	█	█	█	█	
2.4.8	2-8	26	Should read "...restore topographic landforms and/or reduce the volume of excess spoil generated." kg	Yes	Apply change per comment
2.4.8	█	█	█	█	
2.4.9	2-9	3	I thought we were specifically going to exclude options that required statutory changes. As the Act specifically allow variances (exemptions) a prohibition would require an act of Congress. pe	No	This alternative is feasible and is included as the most protective alternative.
2.4.9	2-9	11	Needs to be made clear what "financial assurances" means in this context. In SMCRA terms, "financial assurances" typically means bonding. I believe in this context though, it is intended to mean specific documentation from outside parties who may be involved in the proposed PMLU (land developer, local governments, utilities, etc). kg	Yes	Strike "...and backed by financial assurance." Replace with - "...feasible, achievable and financially supported."
2.4.10	█	█	█		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.4.10	2-9	24-27	restored before mining or the 5 year prior to mining are and if the same. Do we mean previously scouted areas covered five years prior to mining? b	Yes	Insert - "... the area was protected prior to the current mining activity or 5 years prior to any previous mining activity."
2.4.10	2-9	33-34	do not believe this is a correct statement based on the most recent copy of the draft rule. Same as above on the "restored before mining" issue. dd ll		
2.4.11	2-10	1	Change to "... jeopardize the continued existence of endangered ..." bl	Yes	Strike "... cannot jeopardize..." Insert - "... cannot adversely affect..."
2.4.11	2-10	3	... select plant material ... I'm not sure what this means. Are we saying "plants selected for revegetation"? pe	Yes	Strike "... select plant material..." Insert - "... select suitable revegetation plant species based on habitat value to fish and wildlife."
2.4.11	2-10	5	"Additional requirements" is very vague, will these be identified elsewhere in the EIS, if so that section should be referenced (BI)		
2.4.11	2-11	15-17	We probably need the 1926 Bio Opinion language as included in the standards. b		
2.5.1	2-10	34	Based on hydro and watershed area (intermittent) bl	No	Language is suitable for intent.
2.5.1.2	2-11	15	Current regulations also require seasonal quality and quantity information. dd	Yes	Insert - "..., the quality and quantity of groundwater sufficient to demonstrate seasonal variation and water usage."
2.5.1.2	2-11	17	"... quality information must include..." should read "... quantity information must include..." dd	Yes	Apply change per comment
2.5.1.2	2-11	19	Delete ")". dd	Yes	Apply change per comment
2.5.1.5	2-12	18	The current regs do not require natural channel techniques bl	No	816.43 (b)(4) Diversions states intermittent and perennial stream channels restored after the completion of mining must be designed and constructed using natural channel stream design techniques.
2.5.1.6	2-12	27	Current regulations also require TSS for streams. dd	Yes	Per comment include TSS as it is a minimum requirement for

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
					surface water monitoring.
2.5.1.6	2-12	30	The NPDES sampling frequency is different than SMCRA and should be stated. dd	Yes	Strike sentence – "Parameters required for point source discharge..." Changes to monitoring requirements for NPDES discharges are not being proposed.
2.5.1.7	2-12	33-35	Current regulations require compliance with all applicable state and Fed water quality laws and regulations. dd	Yes	"... with permit a conditions or Federal, State or Tribal water quality laws and regulations, the permittee must..."
2.5.1.9	2-13	9	Should read "there are a host..." kg		Apply change per comment
2.5.11	2-13	14-16	Probably need more detail here considering the complexity of the soils and reveg topic. bl		
2.5.2.2	2-14	25-30	At a minimum, the list of parameters should also include TSS, TDS/SC to be truly more protective. pe	Yes	Insert TSS, TDS and Specific Conductivity to the list of parameters per comment
2.5.2.6	2-16	2	The document uses the term "material damage". I would avoid using this term as it has specific meaning which I believe is unrelated to it use in this context. I would recommend using the plain word "damage" or "erosion" because that what we are talking about "damage" or water "erosion" of hydraulic control structures. pe		Delete "...control structures, material damage, and any remedial damages..." Insert – "...control structures, inspection observations and any remedial measures taken."
2.5.2.8	2-16	25-32	There is no mention of surface water quality in the alternative. It only discusses fish. The most reasonable alternative with respect to surface water quality would be to require an exact description of proposed activities.		
2.5.3.5	2-19	1	Should read "...impaired or impacted streams..." kg		Apply change per comment
2.5.3.8	2-20		Strike reference to 50 water use		
2.5.3.8	2-20	9	Add "and/or reduce the volume of excess spoil generated." kg	Yes	Apply change per comment
			Same comment as on 2.4.1.2 (2.5.2.6 above)		
			Reverts to regional standards. What are regional standards? What are the standards? The regional standards are...		
2.5.5.1	2-25	29 – 38	The explanation of "Stream Definition" tells me how it differs from the other alternatives, but it really does tell what it is ... it	Yes	The stream definitions for ephemeral, intermittent, and

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>only tells me what it is not. As a result, I have no understand of how "The Proposed Alternative" defines streams. pe</p>		<p>perennial should be clearly defined. The proposed action definitions should reflect :</p> <p><u>Ephemeral stream</u> means a stream or segment of a stream with the following characteristics:</p> <p>(a) A defined channel and an identifiable streambed are present. The channel contains an ordinary high-water mark and the channel bottom is always above the local water table.</p> <p>(b) Water flows in the channel only in direct response to discrete precipitation events or in response to the melting of snow and ice. Groundwater is not a source of streamflow.</p> <p><u>Intermittent stream</u> means a stream or segment of a stream with the following characteristics:</p> <p>(a) A defined channel and an identifiable streambed are present. The channel contains an ordinary high-water mark and the channel bottom is below the local water table for at least part of the year.</p> <p>(b) Water flows in the channel for only part of the year, with those flows originating from both surface runoff and groundwater discharge.</p>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
					<p>(c) The biological, hydrological, and physical characteristics commonly associated with the seasonal conveyance of water are present, while the biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water typically are absent.</p> <p>(d) The biological community includes species that are aquatic during a part of their life cycle, are capable of diapause or other dormancy periods, or move to perennial water sources in dry conditions. More than 25 percent of the organisms present, as determined in accordance with § 780.19(e) of this chapter, are representative of taxa with the morphological, physiological, or behavioral adaptations for living in flowing water in the region.</p> <p><u>Perennial stream</u> means a stream or segment of a stream with the following characteristics:</p> <p>(a) A defined channel and an identifiable streambed are present. The channel includes an ordinary high-water mark.</p> <p>(b) In a typical year, water flows continuously in the channel during the entire calendar year as a result of both surface runoff</p>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
					<p>and groundwater discharge. The term does not include any stream or segment of a stream that meets the definition of an intermittent stream or an ephemeral stream, but it does include stream segments in which continuous flow ceases because of a protracted period of deficient precipitation or meltwater relative to historical norms, as determined under §780.19(c) of this chapter.</p> <p>(c) The biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water are present.</p> <p>(d) The stream supports aquatic organisms year-round. More than 25 percent of the organisms present, as determined in accordance with § 780.19(e) of this chapter, are representative of taxa with the morphological, physiological, or behavioral adaptations for living in flowing water in the region.</p>
2.5.5.2	2-26	2	<p>The section states the baseline data requirements in the proposed rule are the same as in AIC #2 which is incorrect. AIC #2 does not include pH, TDS/SD, hardness and TSS which the proposed rule does.</p>	Yes	<p>The list of parameters is enough to determine TSS, Specific Conductivity, Hardness, and TSS. The list also includes parameters that are specific to the discharge to a stream.</p>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.5.2	2-26	4-6	The proposed rule will require baseline documentation on all stream types. dd	Yes	The proposed action alternative language should require that baseline documentation is required for all streams.
2.5.5.3	2-26	13-18	The proposed definition of "material damage" does not explicitly state only intermittent or perennial. Also the definition only includes "direct" use but also "reasonably foreseeable" use. dd	Yes	The proposed action alternative language should define material damage as applying to all streams and include provisions that also protect water uses for the foreseeable future.
2.5.5.4	2-26	24-41	The explanation of this alternative is very confusing. It talks about allowing for the construction of facilities in or near intermittent and perennial streams, after consideration of all alternatives, but then turns around and mandates the establishment of 300-foot buffer zone for intermittent and perennial streams, both on and off the permit area. These two concepts seem to be mutually exclusion. Moreover, how are buffer zones to be established off-permit? If are off-permit they are already buffered from mining. pe & kg	Yes	The 300 foot forested buffer needs to be more clearly defined. EX. Establish a 300 foot forested buffer zone between the operation or disturbance and the undisturbed intermittent or perennial stream. Establish a 300 foot forested buffer along each bank of the reconstructed intermittent or perennial stream.
2.5.5.4	2-26	24	The proposed rule does not prohibit mining activities in or within 100 feet of intermittent and perennial streams. dd	Yes	Revise language to explain that the proposed action does not prohibit mining activities in or within 100 feet of intermittent or perennial streams. This activity is allowed under specific requirements and conditions.
2.5.5.4	2-26	39-41	The proposed rule requires the establishment of a 300 ft forested buffer under certain circumstances – not in all cases! Also, where does the proposed rule require a surface runoff management plan as part of 780.28? dd		
2.5.5.4	2-26	41	Buffer must be developed unless inconsistent with the PMLU. Such as the case with prime farmland. We cannot have conflicting mandates for PMLUs bl		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.5.5	2-27	7	The form and function language was deleted in the 2011 version [redacted] improved (all appear under bonding requirements) [redacted]	Yes	[redacted] function [redacted] function in the [redacted] This is the intent as [redacted] included as the proposed action
2.5.5.5	2-27	11-12	I did not read alternative 4 as setting an impaired condition as a standard. I would remove this or reword to state that an impaired condition is not a prerequisite for mining through. bl	No	Alternative #4 does include the provision that a stream can not be mined through unless it has been determined to be impacted or impaired by CWA
[redacted]	[redacted]	[redacted]	[redacted] reference to 30-foot rule. This does not accurately characterize the proposed alternative with respect to AOC restoration. The proposed rule language does define AOC restoration to include the restoration of landforms, including slope aspect and a +/- 15% (or possibly 20%) change in [redacted]		[redacted]
2.5.5.9	2-28	11-18	The "financial assurances" language here is confusing. Is the intent to get assurances from developers that the proposed PMLU will be carried out? The proposed rule text requires the operator to post bond to restore the site to AOC if the proposed land use is not implemented by the end of the revegetation responsibility period.		kg
2.5.5.10	2-28	25	Should read "... would also take into account..." kg		Apply change per comment
2.5.5.10	2-28	21-22	I do not believe this is a correct statement based on the most recent copy of the draft rule.		dd
2.5.5.11	2-28	30-32	The proposed rule states the enhancement requirements are NOT limited to the area to be mined.		
2.6.1	2-31	15	"... assets or are serve as guarantees ..." Try this ... it reads much better. pe	Yes	Apply change per comment
2.6.1	2-31	38	"... function (as described above as required by the final regulation) with no release ..." I think this change captures better what we are trying to say. pe	Yes	Apply change per comment
2.6.1	2-32	4-5	As written, it sounds like you must have material damage occurring to get Phase III release. Add language that states "... damage has not occurred outside ..." dd	Yes	Apply change per comment
2.6.3	2-33	5-22	My problem with imposing agency coordination through SMCRA regulation is that the non-SMCRA agencies, EPA, USACE and state CWA agencies are NOT compelled to adhere to regulations that hold no authority over them. Coordination is a great concept, but implementation without		pe

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			similar CWA regulations requiring coordination cannot be imposed. "Requiring regulatory authorities to coordinate with EPA and USACE to harmonize", cannot be imposed by SMCRA regs alone. The best that can be done is coordination can be attempted.		
2.7.6	2-35	25-27	Why has LMS been identified as the originator of this comment? Specific reference to the identity of any commenters should be removed.	NE	
Appendix	A-1	?	KDOW - Kentucky Department <u>Division</u> of Water pe	Yes	Apply change per comment

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Gardner, Linda R. (Contractor)

From: Greg Conrad [gconrad@imcc.isa.us]
Sent: Tuesday, November 23, 2010 8:58 AM
To: Pizarchik, Joseph G
Cc: Craynon, John; Ehret, Paul
Subject: Letter re Drat EIS Process
Attachments: Pizarchik Letter re Draft EIS.doc

Categories: Green Category

Joe:

The attached letter is being placed in the U.S. Mail to you today, but I wanted you to have an electronic copy ASAP. Montana had hoped to sign as well, but was unable to secure full clearance. They will likely send a separate letter. Should you have any questions, please contact the cooperating state agencies.

Greg

Gregory E. Conrad
Executive Director
Interstate Mining Compact Commission
445A Carlisle Drive
Herndon, VA 20170
Ph: 703.709.8654
Fax: 703.709.8655
Email: gconrad@imcc.isa.us
Website: www.imcc.isa.us



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.¹

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.

¹ 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



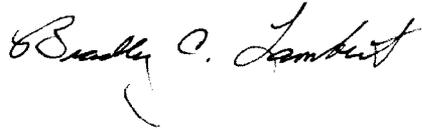
Carl E. Campbell
Commissioner
Kentucky Department for Natural Resources



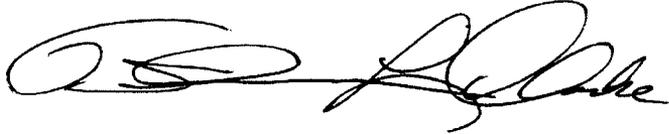
John Caudle
Director
Surface Mining and Reclamation Division
Railroad Commission of Texas



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

Comment Form

Title of Document	SPR EIS - Chapter 4 Comments
Contact Information	
Name	State of Utah (c/o Dana Dean or Peter Brinton)
Telephone Number	801-538-5320 or 801-538-5258
Email	danadean@utah.gov or peterbrinton@utah.gov

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General			<p>Following these general comments, please see DOGM's more specific comments included in the following pages.</p> <p>Since the Cooperating Agencies have not yet been provided with a clear summary of the Proposed Action and the Alternatives (such as a clear, revised Chapter 2), we are unable to provide a complete and accurate evaluation of the potential impacts of the Proposed Action and Alternatives. Until this information is available, together with clear, revised Chapter 3 correctly documenting the affected environment, the stated results of the Proposed Action and Alternatives will be questionable.</p>		
General			<p>Due to time constraints, this review of Chapter 4 has been limited to cover parts of Sections 4.0 (introductory material), 4.5 (Preferred Alternative) and 4.7 (methodology). An in-depth review of all of the reviewed sections was not possible, given time constraints. Review of other sections was generally performed opportunistically, or when required in order to understand references in the sections which were reviewed in detail.</p>		
General			<p>In addition to the following comments, Utah wishes to point out some significant concerns with assumptions and methods used to develop this EIS, all of which lead us to question the feasibility of developing an acceptable EIS of a nationwide scope in such a short time period. We apologize that we were unable to clearly identify some of these issues sooner, but some of these issues have only come to light while reviewing Chapter 4.</p>		
General			This analysis does not adequately consider future coal		

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			production in the Colorado Plateau region. There are future coal production areas in Utah or possibly other Colorado Plateau states that are not now active, but which are <u>expected to be active</u> during the time period in which the rules will actually be implemented. Some of these areas have been omitted entirely from the EIS scope. Most of these reserves are federal coal reserves, and some may be surface mined. We can provide additional info as requested.		
General			One of our general conclusions regarding the current Chapter 4 is that it cannot accurately describe foreseeable impacts to the Colorado Plateau coal-producing region because the scope used to identify the Affected Environment upon which Impact Analysis is based is incorrect, and the Proposed Action is vague. DOGM recognizes significant deficiencies in its review of sections addressing Utah. We expect that similar deficiencies of important information to exist in other Colorado Plateau areas not reviewed in as much detail. DOGM believes that the decision to analyze <u>nationwide</u> rule changes over such a short period of time has resulted (thus far) an inaccurate and inadequate document overall.		
General			It is noted that royalties from the mining of federal and state coal have been included in the socioeconomic analysis in Chapter 4 of the EIS. Thank you. This is an important addition to the EIS. In our opinion, the loss of federal and state-owned coal as a government asset has not been given enough attention in this NEPA analysis. In the Colorado Plateau region, entire coal fields with primarily federal coal reserves do not fall within the current scope of the EIS.		
General			The Production Shift Mathematical Model is not included with the draft document, nor are the model inputs and outputs provided for the five alternatives analyzed. The model must be provided in order for cooperating agencies to comment adequately on the draft statement's analysis.		
General			The public impact of potential changes to the cost of electricity is also a significant socioeconomic factor also not been discussed in this Chapter or in the EIS.		
			While some Chapter 3 comments from the cooperating agencies have been considered in the development of Chapter		

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			<p>4 (such as a basic analysis of royalties on federal coal), it appears that some Chapter 4 conclusions about impacts may have been prepared prior to the incorporation of Cooperating Agencies' Chapter 3 comments with additional information about the affected environment (Chapter 3).</p> <p>It is understandable that a preliminary analysis of projected impacts would be helpful - perhaps needed - in starting to develop some of the general content of Ch.4. But before the revised draft of the EIS will be ready for public scrutiny, the conclusions in Chapter 4 need to be revised to account for additional information Chapter 3 comments. Otherwise, the conclusions made in the EIS will be both incorrect and indefensible.</p>		
Global			Replace reference to Table 4.2.3-5 with reference to Table 4.3.3-2.		
4.0.2	4-1	26 - 30	<p>1. List the 11 principal elements considered and the 4 elements not considered. Reviewing Chapter 2.6, there are 3 elements described as "primarily administrative or risk-reducing in nature" which "have been eliminated from further analysis": Performance Bonds and Release (2.6.1), Financial Assurance for Long Term Discharges of Parameters of Concern (2.6.2), and Permit Coordination (2.6.3). What is the 4th element not considered?</p> <p>2. Remove the reference to Section 4.04 (sic) and replace with a correct reference for the rationale for determining "that changes to four of these principal elements would not result in any identifiable environmental impact". Section 4.0.4 provides rationale for excluding resource areas, not elements.</p>		
4.0.3	4-3	1-2	<p>It appears that the estimation of "future coal production" does not account for the significant increase in nationwide and global coal consumption (and associated increases in coal production) that are projected by the EIA and other sources (http://www.eia.doe.gov/oiaf/ieo/coal.html; http://www.tsl.uu.se/uhdsg/Publications/USA_Coal.pdf) over at least the next 25 years. The proposed rule changes would affect many of these years. The modeling of coal production shifts should account for increased production.</p>		
4.0.3	4-3	3 - 5	A statement should be made either in this section or in the Methodology section indicating how representative the 2008		

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			<p>U.S. EIA data are for describing baseline coal production (i.e., was 2008 a typical year when compared to previous years, or was 2008 an unusual year for any of the seven coal mining regions?). This is important in evaluating the current state of coal mining for Alternative 1 (no change), to which the other alternatives are compared. A combination of observed and projected coal production data from a few years surrounding 2008 would be more justifiable in creating a baseline, considering recent economic changes.</p> <p>The use of 2008 U.S. EIA data for baseline should be added as a bullet to Section 4.7.1.1</p>		
4.1.2.2	4-8	19	Fix and make uniform the reference to fill stability study, here and in following paragraphs.		
4.1.2.2	4-8	27	Fix and make uniform the reference to fill stability study.		
4.1.1	4-5	10-12	<p>We understand the 2008 Stream Buffer Zone and "excess spoil minimization" rules complicate the description of the no change Alternative 1. However, the way Section 4.1 is currently written, it appears that the "No-Change" Alternative 1 might actually be changing things as part of the EIS (eg. "land elements under Alternative 1 would change requirements related to surface configuration and fills..." lines 6-7, p4-7). It is questionable whether the 2008 rule can be portrayed as baseline now, if it was overturned.</p> <p>It would probably help here to give additional explanation about the 2008 rule and why actions outside this EIS are currently changing the "No-Change" Alternative.</p> <p>If there are other known actions (such as pending state or federal regulations) that would cause existing conditions to change independent of this EIS, they should be clearly identified and then discussed in this section, and possibly in the Cumulative Effects section.</p>		
4.1.2.2	4-7	6-7	<p>Consider: "land elements under Alternative 1 would change requirements related to surface configuration and fills..."</p> <p>The way this section is currently written, it appears that the "No-Change" Alternative 1 might actually be changing things</p>		

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			as part of the EIS.		
4.1.2.2	4-7	26	Alternative 1 itself does not propose to change the previous regulations related to AOC variances. The way this section is currently written, it appears that the "No-Change" Alternative 1 might actually be changing things as part of the EIS.		
4.1.3-2	4-14	TABLE 4.1.3-2	Headings on left are cutoff		
4.1.3.1.1.3	4-18	10-12	In western coal basins, "Recharge to the upper aquifers in the landscape takes place largely during the snowmelt period. Rainfall during winter and early spring can also be effective in recharging the upper aquifers in the landscape. <i>[Where does the quote within the quote end, and who is being quoted?]</i>		
4.1.4.1	4-33	14-16	Should this sentence be bulleted?		
4.1.4.3	4-45, 4-46	22, 40	Under current regulations, native species are required in site regulation unless explicitly approved by the RA. 30 CFR ~816.111 (a)(2) : Comprised of species native to the area... ~30 U.S.C. 1265 (b) (19)...and permanent vegetative cover of the same seasonal variety native to the area of land to be affected. Additionally, it is important to allow non-native vegetation in some cases, such as in the Western United States where in drier areas where non-native species can be beneficially used as nurse crops.		
4.1.4.3	4-47	15,16	The Simmons et al 2008 paper only assessed reclaimed mine lands in Appalachia. This statement is not true for the entire U.S. The majority of reclaimed mine land in Utah has not been converted to pastureland.		
4.1.6.1.2.2	4-59	3,6-7	Give the reason for the lack of more specific data by region (compared to that of other resources).		
4.2.1	4-77	Table 4.2.1.1	For the values shown in the first six columns of this table, suggest either rounding values showing 3 significant figures or rounding to nearest 1,000 (or greater).		
4.2.1.3	4-79	22-29	The line numbers are overlapping the table in the far right column.		
4.2.3.1.1.2	4-84	30-35	<i>Something's missing – the following lines don't make sense.</i> 30 With the essential elimination of surface mining and the requirement for material damage to		

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			31 eliminate any impairments to the physical, chemical, or biological function of any streams, the 32 affected Basin, the Illinois Basin, and the Colorado Plateau regions, respectively, compared to 33 Alternative 1. Streams that have previously been affected by surface mining activities may 34 recover as the hydrologic balance and land uses become reestablished stream length may be 35 expected to be reduced by 86%, 54%, 60%, and 60% for the Northern Rocky Mountains and 36 Great Plains, the Appalachian to pre-mining land uses.		
4.2.3.1.1.3	4-85	17	"...the existing condition since mine spoils are more permeable than the in situ condition, thus..." Use of "in-situ"?		
4.2.3	4-87 to -88	Table 4.2.3-2	This table needs a description of the units, which are assumed to be percent.		
4.2.3.3.1.2	4-90	14-20	Planting trees on lands that supported grasses in the pre-mining state will result in a net loss of both surface and ground water because trees consume more water than grasses. Lines 18-20 correctly point out that some trees consume more water than others, e.g., conifers vs. deciduous trees. For example, see: Gifford, G.F., Humphries, W., Jaynes, R.A., January 1983, A Preliminary Quantification of the Impacts of Aspen Succession on Water Yield within the Colorado River Basin (A Process Aggravating the Salt Pollution Problem), Hydraulics and Hydrology Series UWRL/H-83/01, Utah Water Research Laboratory, Utah State University, Logan Utah		
4.2.4.3	4-94	28	Native species are currently required in federal regulations unless otherwise approved by the RA.		
4.2.6.4.1	4-103	11-16	It is noted that coal royalties have been included in Chapter 4 of the EIS. This is a good inclusion. However, in our opinion, the loss of federal and state-owned coal as a government asset has not been given the attention it deserves as a public resource in this NEPA analysis.		
4.2.6.4.1	4-106	12-14	The impact of these rules on Utah's coal mining industry and associated socioeconomics is incorrect as presently stated in these sentences. A surface coal mine with potential for several decades of mining was permitted in Kane County in 2010 and construction is well underway. This coal field was		

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			<p>not, but should have, been included within the scope of the EIS according to scope determination methods. Other coal reserves in Utah not included within the scope of this EIS are also expected to be mined by surface methods in the future.</p> <p>This analysis does not consider coal production areas in Utah that are expected to be active during the time period in which the rules will actually be implemented. Some of these reserves are likely federal coal reserves. It is suspected that Colorado may also have future reserves of surface mineable coal that would be affected as well.</p>		
4.2.6.4.2.3	4-110	25	The exact figures are not at hand, but a considerable amount of the coal mined in Utah is shipped by truck! (see: 4.3.6.4.2.3 and 4.4.6.4.2.3)		
4.4.3.1.1.2	4-165	25-27	<p>Regarding the following statement: "The 5% projected increase in surface mining in the Northern Rocky Mountains and Great Plains indicates the belief that streams in this region have been previously impaired, most likely by gas extraction activities."</p> <p>It is incorrect to assume without any concrete justification and explanation that there would be a 5% increase in production in these areas, as stated. Please include your source.</p> <p>Also, this statement belongs in the section discussing the model assumptions.</p>		
4.5.1	4-195 to - 198	General	<p>The "production Shift Mathematical Model" alluded to in Section 4.5.3.1.1.3 (page 4-201 lines 29 to 30) and vaguely described in Section 4.7.1 needs to be provided in order to comment adequately on the draft statement's analysis. There is no discussion specific to Alternative 5 describing the assumptions associated with the production shift values presented.</p> <p>From a review of the scant information provided in Section 4.7, it appears that surface mining and underground mining were evaluated as either "affected" or "unaffected" by Region for each alternative. Coal production was then adjusted such that increased production from "unaffected" regions would compensate for production lost from "affected" regions so to</p>		

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			keep constant energy production (BTUs). No summary of the "affected" and "unaffected" mining methods by region is provided in Section 4.5.1 for Alternative 5.		
4.5.1.1	4-196	10-11	Suggestion for modification: "Subsidence caused by underground longwall mining, <u>very shallow room-and-pillar mining</u> , or room-and-pillar retreat mining could dewater a stream segment <u>given specific geology, mining geometry, and other specific factors.</u> " The factors affecting subsidence should be restated here to elaborate on the phrase "mining could dewater..."		
4.5.1.1	4-196	24-27	It would not necessarily be "impossible" or too "difficult" to restore subsided elevation in all cases. The words "difficult" and "impossible" are probably overly-strong words to use, at least without some qualification. Perhaps it may be generally closer to impossible or more difficult in the eastern coal fields. Additionally it cannot be assumed that all changes in elevation caused by longwall mining would necessarily change the form and function of the stream.		
4.5.3.1.1.3	4-202	7	Replace "Projected mining in the Colorado Plateau..." with "Projected stream impacts in the Colorado Plateau..."		
4.5.3.1.1.3	4-202	10	Replace "Projected levels of mining in the Gulf Coast..." with "Projected stream impacts in the Gulf Coast..."		
4.5.3.1.1.3	4-202	18	Replace "Mining in the Northern Rocky Mountains..." with "Stream impacts in the Northern Rocky Mountains..."		
4.5.3.1.1.3	4-203	1	Replace "...mining production in the Northwest..." with "...stream impacts in the Northwest..."		
4.5.3.1.1.3	4-203	4	Replace "...mining production in the Other Western..." with "...stream impacts in the Other Western..."		
4.5.5.2	4-212	4	Change "to be proved achievable and feasible" to "financial assurance". It is currently required that a postmining land uses be proven to be achievable and feasible. 30 U.S.C. 1258(a)(4) states, "a detailed description of how the proposed postmining land use is to be achieved and necessary support activities which may be needed to achieve the proposed land use." However, financial assurances are not currently required. These "financial assurances were mentioned in Chapter 2, page 2-28, lines 16 and 17.		
4.5.5.2	4-212	5-8	This statement is <u>not</u> true in Utah. Currently, the majority of reclaimed lands are designated as wildlife habitat, grazing, or industrial uses.		

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4.5.5.2	4-212	27-28	Preventing PMLU's such as cropland or industrial which "may be against the wishes of the landowner" (pg. 4-140 line 10) would have more adverse impacts than are analyzed. If the landowner chose to develop the land as industrial or for cropland after the bond release was achieved, nothing in SMCRA would prevent the landowner from doing so. This would then be a waste of substantial time and money reforesting an area that was going to then be re-disturbed.		
4.5.6	4-213	8-9	Remove "comparatively".		
4.5.6	4-213	8-18	A statement acknowledging the role of royalties earned from the state and federal coal production on the federal, state, and local government revenues in both the Rocky Mountain / Great Plains and the Colorado Plateau coal producing areas in Western states should be added.		
4.5.6	General	General	<p>An important socioeconomic element in this chapter that is too vague for analysis is whether jobs and revenue associated with coal-fired power plants (which are directly tied to the coal industry, and which cannot be replaced immediately) are included in this analysis.</p> <p>The socioeconomic impact of potential changes to the cost of electricity is also a significant factor apparently not currently discussed in this EIS. This should have been analyzed.</p> <p>See the following source for an idea about the impact of coal-generated electricity and coal mining in general on Utah's economy: http://www.unews.utah.edu/p/?r=070710-1</p>		
4.5.6.1.1.2	4-214	9-11	A statement explaining the reasons for using new regional areas to evaluate employment changes, instead of the original coal producing regions, should be included.		
4.5.6.1.4	4-218	17-32	Since royalties are technically not taxes, but a partial recovery of a resource that is owned by the respective state and federal government, the economic impacts associated with royalties should be included in a separate section apart from the taxes.		
4.5.6.1.4	4-218	17-32	NEPA requires environmental analysis of federal resources and impacts to them when decisions regarding their future use are proposed. Federal coal is a natural resource that will definitely be affected by proposed changes to federal coal mining rules, and the resources and impacts to these		

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			resources should be more strongly considered in this EIS. Some general statement about the impact of both current and future federal coal royalties on the federal government's revenue should be included.		
4.7	4-249	General	An appendix providing model inputs, equations / calculations, and results is necessary. Add a reference to this appendix in Section 4.7. Throughout Section 4.7, examples are provided; however, these examples are typically for Alternative 4 only. Additional information on the model inputs is necessary in order to comment adequately on the draft statement's analysis.		
4.7.1.1	4-250	General	Add a bullet to the list of Major Assumptions stating that "Baseline coal production data are represented in Alternative 1 and are based on U.S. Energy Information Administration data for 2008".		
4.7.1.1	4-250	6-8	The US Energy Information Administration (part of DOE and cited elsewhere in this EIS) reports that nationwide coal consumption is expected to significantly increase through the year 2035. Without further research, it is assumed that the increase in coal consumption is expected to be provided primarily by domestic coal producers, given the countries large coal resources and existing industry. This assumption appears to be incorrect. <u>Source: http://www.eia.doe.gov/oiaf/ieo/coal.html</u>		
4.7.1.1	4-250	6-8	Unless valid reasons can be provided for using the static 2008 coal production numbers to help model the environmental impacts of the potential rules on system with projected dynamic coal production, this assumption contributes a significant source of error to the model results that will need to be corrected. The conclusions of the EIS would otherwise be inaccurate.		
4.7.1.1	4-250	General	Regarding the following statement from Alternative 2 (4.4.3.1.1.2, p165): "The 5% projected increase in surface mining in the Northern Rocky Mountains and Great Plains indicates the belief that streams in this region have been previously impaired, most likely by gas extraction activities." It appears that this assumption of an increase in surface mining in the N Rocky Mtn region may have been made for all		

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			<p>Alternatives as part of the model analysis. If so, this assumption should be included here.</p> <p>Without any concrete basis for this assumption, no justifiable conclusions can be made using it. Please include your source, as this assumption, if understood correctly, is critical to the model design and output.</p>		
4.7.1.1	4-250	15-17	Justification for the exemption of metallurgical coal production in this analysis should be stated here. (ie. If the production is so much lower than generation coal, this should be stated together with a reference).		
4.7.1.1	4-250	15-17	Metallurgical coal production from elsewhere in the United States (besides Appalachian coal-producing areas) would also be affected, and justification for its omission in this EIS needs to be stated as well.		
4.7.1.6	4-253 to 254	General	This section would be improved by simply stating that a deterministic model was used for the DEIS. Describing a stochastic model which has not been finished or used in the statement's analysis is confusing and detracts from the modeling that has been used for the analysis. Text / figures describing stochastic analyses should be withdrawn until the stochastic analysis has been completed and incorporated into the statement.		
4.7.1.6	4-253	14 – 16	Suggest removing discussion of Beta-PERT distributions, since these are not used for the analysis in this statement (see comment above). If maintained, then clarify the definition of the acronym PERT (which could infer Program or Project Evaluation and Review Technique).		
4.7.1.6	4-254	2	<p>The document states that the "stochastic model is still being developed". This seems to severely undermine the cooperating agencies ability to evaluate and comment on the predictive methodology and raises several questions:</p> <ol style="list-style-type: none"> 1. Why is a stochastic model still being developed AFTER the analysis section of the statement has been completed? 2. When will the stochastic model be completed, and how will its results be incorporated into the analysis? 3. What effects will the stochastic model results have on the analysis in the statement? Is the stochastic an academic exercise, or will its results affect the findings of the statement? 		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.7.1.7	4-254	General	Include a description of how representative the 2008 U.S. EIA data are for describing baseline coal production, i.e., was 2008 a typical year when compared to previous years, or was 2008 an unusual year for any of the seven coal mining regions?		
4.7.1.17	4-263 to 264	General	<p>The approach whereby affected stream length is calculated based on stream densities seems reasonable. However, this approach neglects to consider differing sensitivity to stream effects in regions with greater stream density (Appalachia) compared to regions with lower stream density (Colorado Plateau).</p> <p>Arguably, the sensitivity of a region to impacts to streams could be considered to be inversely proportional to the stream density. For example, consider areas A and B, each of equal size. Area A contains eight perennial streams and a stream density of 0.8 mi/100 acres, while Area B has one perennial stream and a stream density of 0.1 mi/100 acres. An alternative disturbing 100 acres would affect 0.8 miles of stream in Area A and 0.1 miles of stream in Area B, so there appears to be less effect on Area B. Now consider that Area B has only one perennial stream, so there is no suitable alternative source of water for drinking, aquatic wildlife, and recreation. Area B, on the other hand, may have seven other streams which remain unaffected and continue to provide water for drinking, aquatic wildlife, and recreation. Is there really less of an effect in Area B?</p> <p>An evaluation attempting to quantify such region-specific and potentially subjective criteria describing sensitivity to surface water (and groundwater) impacts may be beyond the scope of this statement. Absent such considerations, it is suggested that the stream impact analysis and results include a caveat that a unit effect on streams (mi/year) may have different impacts from region to region.</p>		
4.7.1.17	4-264	4 - 7	The text states that "an overall stream density for each coal resource region was calculated using a weighted basis" and that "[w]eighted regional average stream densities were calculated for perennial, intermittent, other and total" stream lengths. However, the weighting criteria are not described nor are weighting factors identified. Additional information on the		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			weighting approach is necessary in order to comment adequately on the draft statement's analysis.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Comment Form

Title of Document	PDEIS Chapter 4
Contact Information	
Name	Ethel R. Eaton
Telephone Number	804-367-2323, ext. 112
Email	Ethel.eaton@dhr.virginia.gov

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.0.4	4-4	27 -31	We would suggest separating cultural resources – historic properties - and paleontological resources. We also suggest choosing more appropriate wording. We would not agree that the regulatory framework “protects” historic properties. It might be preferable to say “requires them to be taken into consideration decision-making”. We would also suggest dropping the sentence “Any localized effects on paleontological and cultural resources cannot be projected within the scope of this programmatic and national analysis. “ Effects can certainly be addressed in a more programmatic way. We fully understand that the purpose of the study is enhanced stream protection, not enhanced protection of historic properties. Nevertheless, the effects on historic properties will be very much the same as effects on visual resources (and can and should be addressed briefly along with land use, visual resources and recreation). Again we will point out that heritage tourism is also an element of recreation and in addition has economic benefits. We recommend that historic properties be more fully integrated into this chapter. Please note that the preferred alternative, Alternative 5, also appears to provide the best alternative for historic properties.		
4.0.5	4-5	3	Include historic properties with land use, visual resources, and recreation.		
4.2.5	4-96	13ff	Add: Under Alternative 2 surface mining would be essentially eliminated (95%) reduction. The Land Elements under Alternative 2 would eliminate all AOC variances , including mountaintop removal mining, and thus also eliminate the majority of effects to archaeological sites and historic structures and landscapes.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.2.5.2	4-96	26-27	The expansion of documentation requirements would provide additional documentation and review for the assessment of visual impacts on historic structures and landscapes in the Appalachian , Gulf Coast, and Illinois Regions, where visual impact assessment historically has not been well documented. (We have been asked to comment regionally, not on our respective states, but we do want to bring your attention to the fact that the RA in Virginia does give careful consideration to visual impacts on historic structures and districts.)		
4.2.6	4-97	15-16	Add; Indirect effects of the loss of employment positions may include abandonment of historic communities as residents depart for jobs in other areas, leading to neglect and abandonment of historic structures and districts.		
4.3.5.2	4-139	18-19	The expansion of documentation requirements would provide additional documentation and review for the assessment of visual impacts on historic structures and landscapes in the Appalachian , Gulf Coast, and Illinois Regions, where visual impact assessment historically has not been well documented.		
4.4.4.2	4-173	34-37	Despite the substantial unknowns it is possible that new mine sites developed in the future under this alternative would have fewer adverse impacts to upland and hence archaeological sites and historic structures and districts compared to the No Action Alternative because regulatory authorities may not allow AOC exceptions.		
4.4.5.1	4-175	13-16	More restrictive definitions of streams and material damage , as well as limitations on activities near streams or on mining through streams, would reduce the potential for effects on visual impacts to historic structures, districts and landscapes as well as direct effects on archaeological sites.		
4.4.5.1	4-176	10-13	Where visual impact is not usually well documented the continuation of the existing practices can result in visual impacts to historic structures, districts, and landscapes.		
4.4.6.1.1.1	4-177	25	The Appalachian Basin and the Colorado Plateau would be expected to experience the greatest losses of historic structures and districts as residents depart for jobs in other areas		
4.5.1.1	4-196	27-31	Alternative 5 may result in more limited effects on historic properties than any other alternative. It is anticipated that those regions with high perennial and intermittent stream frequencies , such as the Illinois Basin and the Appalachian		

Comment Form

Title of Document	PDEIS Chapter 4
Contact Information	
Name	Richard Wahrer & Paul Rothman Kentucky Dept. for Natural Resources
Telephone Number	502.564.6940
Email	<u>Paul.rothman@ky.gov</u>; <u>Richard.wahrer@ky.gov</u>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.7.1.1	4-250	21-23	<p>General Comment: The major assumption that the impact analysis does not consider any current trends caused by EPA and associated 402, 404 permitting processes as applied to the Appalachian region should be strongly reconsidered. Please be aware that any impacts from mining that EPA is involved (in Appalachia) WILL become a national issue. The reconsideration of this assumption is need because the projected values for mining acreage, stream length affected, coal production and subsequent economic values (revenue, wages, employment, severance taxes, etc) mention in this PDEIS is flawed. Kentucky, if not the other Appalachian states) have already experienced a drastic downturn in the initiation of new operations with the last 18 months and likely the next 12 months, if not longer. These events, in turn, greatly affect the cumulative impact analysis. There will be</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			no business as usual anymore. An additional assumption in this section is that SMCRA rulemaking implementation may take 10-12 years. Be aware that EPA and state water agencies may implement changes within the same time period or sooner. All facets of mining projections in this PDEIS may be subject to severe revision.		
4.1.3.1.1.2	4-12	24	Please acknowledge the Fill Placement Optimization Process (FPOP) is a guidance document issued by the Kentucky Department for Nature Resources-Reclamation Advisory Memorandum (RAM) # 145. This would be consistent, then, with the acknowledgements of state regulatory guidance documents of New Mexico and Virginia found on page 4-124, lines 10-21.		
Table 4.1.4-2	4-34		Column heading "Range of Concentrations from Downstream of Mine Sites": More information is needed-how many sites and how far downstream? Please verify (or refute, with the correct information) that the Pond (2008) study involved 37 sites in West Virginia and then, footnote those facts.		
4.1.4.1	4-34-4-37		General Comment: In regards to the review of contaminants associated with mining: the comparison of the Pond (2008) study and the Hartman et al. (2005) study lists results that are confusing, contradictory and ambiguous against the backdrop of mined sites, un-mined		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			sites, mine-filled watersheds and reference streams. Levels of these contaminants may show no difference between mined and unmined sites though watersheds may show greater amounts and often compared to reference streams. It could be argued that an unmined site should be a reference for a mine site. Reference streams may not be subject to any activity or disturbance in the area. Mine-filled watersheds may reflect other than mining impacts. A more detailed discussion of these studies may provide much needed clarification.		
4.1.4.2	4-44	2-3	The sentence "Mining and associated activities can produce noise far above normal ambient levels" is merely stating the obvious. Normal ambient levels in many of the hollows of eastern Kentucky is extremely low due to the complete lack of noise-generating elements. Please delete this sentence.		
4.1.4.3	4-46	34-35	The sentence "...salamanders were not found on reclaimed mine sites of varying age and cover types in Appalachia.." is just completely incorrect. KYDNR invites the author and all interested parties to come see the salamanders on our reclaimed sites in Kentucky.		
4.2.2.2.	4-81	27-35	It should be noted that landforming may increase surface disturbance (of originally undisturbed area) and with the re-establishment of stream densities may result in		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			increased water-spoil interaction. Exposures of large areas, rather than certain strata to be buried and encapsulated in a fill may cause increases in TDS and conductivity.		
4.2.2.2	4-82	Foot-note 2	It should be corrected to: OSM did approve the permitting of shadow area above underground mine workings in Kentucky (May, 1982, Federal Register)		
4.2.5.2	4-96	22-25	It should be noted that the reforestation requirement may be in conflict with the wishes of a private landowner. It should also be realized that the landowner who begrudgingly accepts a required PMLU may clear trees after bond release.		
4.3.3.3.1.2	4-133	24-25	"Use of native species...is expected to further reduce erosion..." is simply incorrect. Certain introduced species, as well as invasive species, can effectively reduce erosion. Please consider deleting this sentence as it is not needed for the intent of this paragraph.		
4.5.3.3.1.1	4-205	29&38	The requirement to achieve "stream form and function" is defined as including flow-regime, chemical constituents, physical parameters, and sediment characteristics similar to pre-mining watersheds. This appears to be an expansion of the definition for stream form and function used in Chapter 2. Please clarify.		
4.5.3.3.1.1	4-205	33	Requiring that watersheds "be reestablished to a level that mimics pre-mining conditions" may have the effect of allowing mining only in		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>previously disturbed watersheds and preventing mining in undisturbed watersheds. Water quality samples collected by the US Forest Service in the late 1970's show an average TDS concentration of 265 mg/l for four mining disturbed watersheds distributed across eastern Kentucky while the average TDS concentration for undisturbed watersheds would likely be below 50 mg/l. It would likely take decades for TDS concentrations to return to the undisturbed baseline concentration of less than 50 mg/l. Under this requirement, the impacts to coal production may be greater than projected in the Draft EIS.</p>		
4.5.3.3.1.1	4-205	39	<p>Does "characteristics that are similar to pre-mining watersheds" refer to current conditions as defined by baseline sampling which could include impacts from previous mining, watersheds that are unaffected by previous mining but may have been affected by other activities such as logging, watersheds that are essentially unaffected by any disturbance, or other watershed condition? Please clarify.</p>		
Table 4.5.8-1	4-237		<p>Action: CWA TMDL Program-Future Action: The TMDL program in Kentucky, is and has been, underfunded and understaffed. An increase of TMDL determinations beyond present levels is not expected.</p>		

Gardner, Linda R. (Contractor)

From: Greg Conrad [gconrad@imcc.isa.us]
Sent: Monday, February 28, 2011 4:14 PM
To: Pizarchik, Joseph G; Ehret, Paul; Winters, William R. "Bill"
Subject: WGA weighs in
Attachments: WGA ltr to Salazar.pdf

FYI. Thought you would find this of interest, if you haven't seen it already.

Greg



**WESTERN
GOVERNORS'
ASSOCIATION**

C.L. "Butch" Otter
Governor of Idaho
Chairman

Christine O. Gregoire
Governor of Washington
Vice Chair

Pam O. Inmann
Executive Director

Headquarters:
1600 Broadway
Suite 1700
Denver, CO 80202

303-623-9378
Fax 303-534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001

202-624-5402
Fax 202-624-7707

www.westgov.org

February 27, 2011

The Honorable Ken Salazar
Secretary of the Interior
Department of the Interior
1849 C. Street, N.W.
Mail Stop 7060
Washington, D.C. 20240

Dear Secretary Salazar:

On behalf of the Western Governors' Association (WGA), we are writing to express concerns over recent actions by the Office of Surface Mining, Reclamation and Enforcement (OSMRE) to comprehensively revise regulations regarding stream protection under the Surface Mining Control and Reclamation Act (SMCRA). These proposed changes, called the "stream protection rule," will apply nationwide and in the agency's own words are "much broader in scope than the 2008 stream buffer zone rule." WGA is an independent, nonpartisan organization of Governors representing 19 Western states and three U.S.-flag Pacific islands. The states in our territory produce 599 million tons of coal annually, representing 56% of the total U.S. coal production.

Several of our member states who are "cooperating agencies" have delivered a letter (see attached letter dated November 23, 2010) to your Director of OSMRE expressing serious concerns about the need and justification for both the proposed rule and accompanying environmental impact statement (EIS), as well as the quality, completeness and accuracy of the chapters of the EIS that they had the opportunity to review. WGA is also concerned by the procedures used by your agency in developing the EIS to support this rule. Members who are "cooperating agencies" on the EIS feel that they have not had a meaningful opportunity to comment on its contents, given the constrained time periods for reviewing and submitting comments.

WGA feels that the OSMRE has not provided a sufficient basis to support the need for sweeping regulatory changes. In fact, one of the primary justifications put forward by the agency in its Federal Register notice is a June 11, 2009 memorandum of understanding (MOU) between the Administrator of the U.S. Environmental Protection Agency, the Acting Assistant Secretary of the Army, and you. However, the MOU was specifically targeted at "Appalachian Surface Coal Mining," which expressly refers to mining techniques requiring permits under both the Surface Mining Control and Reclamation Act (SMCRA) and Section 404 of the Clean Water Act (CWA), in the states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia." (See MOU at p. 1

and fn 1). Despite this limitation in the MOU, the OSMRE rules will be applied to coal mines throughout the United States, including coal-producing Western states that we represent.

Likewise, the agency has not provided objective data to support such comprehensive regulatory changes. OSMRE's most recent annual evaluation reports for Western states for 2010 strongly suggest otherwise. For example, the report for Wyoming, which produces more coal than any other state in the U.S. (almost 40% of the nation's total), says that: "...the Wyoming program is being carried out in an effective manner." The report also demonstrates significant and steady progress in reclamation, showing that the ratio of reclaimed to disturbed acres has steadily increased from 10% in 1988 to 45% in 2010. The report also stated that the state ensured that backfilled and graded areas will be returned to approximate original contour, that there have not been any public complaints about bonding, and that Wyoming has not had any bond forfeitures in recent years. Finally, despite OSMRE's insistence on a 78% increase in inspections, no enforcement actions were taken by OSMRE during 2009 or 2010. In OSMRE's own words, "this lack of additional enforcement actions, despite increased inspection frequency, helps to illustrate the effectiveness of the Wyoming's regulatory program."

Similar statements can be found in OSMRE evaluation reports on other WGA-member states. Here is a sampling of what OSMRE said about some of the other major coal producing states in the West:

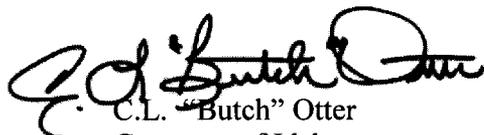
- North Dakota: "Overall, North Dakota has an excellent coal regulatory program."
- Montana: "...an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on people, land, water, or structures outside the permit area...Off-site impacts were not identified during the reporting period."
- Utah: "...site conditions indicated that the state is effectively implementing and enforcing its program."
- Texas: "...the Office of Surface Mining finds that Texas is properly administering its regulatory and abandoned mine lands programs."
- Alaska: the "DMLW [Division of Mining, Land, and Water] is effectively maintaining and administering the coal regulatory program in accordance with the Alaska Surface Coal Mining and Reclamation Act."

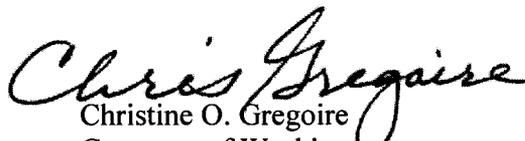
WGA urges you to consider these reports on Western state coal programs, evaluate the proposed regulatory changes, and consider suspending further work on their implementation so that OSMRE can re-examine the purpose and need for these rules, and provide appropriate scientific and factual information to support rule changes of this magnitude. If after such evaluation and consideration the agency determines that rule changes are necessary, we request

The Honorable Ken Salazar
February 27, 2011
Page 3

that OSMRE engage our member states and members of the public in a meaningful and substantial way.

Sincerely,


C.L. "Butch" Otter
Governor of Idaho
Chairman


Christine O. Gregoire
Governor of Washington
Vice Chair

Enclosure

F:\11resos\osm-ltr-feb2011.doc

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.¹

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.

¹ 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,



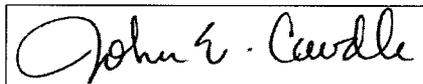
Randall C. Johnson
Director
Alabama Surface Mining Commission



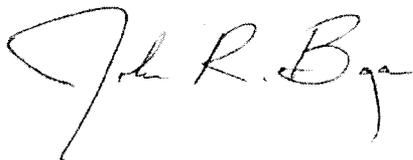
Bruce Stevens
Director
Division of Reclamation
Indiana Department of Natural Resources



Carl E. Campbell
Commissioner
Kentucky Department for Natural Resources

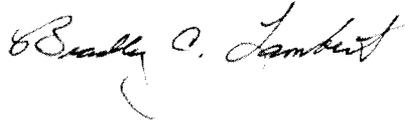


John Caudle
Director
Surface Mining and Reclamation Division
Railroad Commission of Texas



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

Gardner, Linda R. (Contractor)

From: Adams, Gail A
Sent: Wednesday, February 23, 2011 3:49 PM
To: Iudicello, Fay; Davis, Laura; Lee-Ashley, Matt; Ishee, Mary Katherine; Pizarchik, Joseph G
Subject: WGA/WAFWA documents to include in Secretary's briefing materials
Attachments: osm-ltr-feb2011.doc

All:

Please see the final signed OSM letter attached. I'm not sure if you have seen it. Thanks.

Gail Adams

Director
Intergovernmental Affairs
U.S. Department of the Interior
(202) 208-6649

February 14, 2011

The Honorable Ken Salazar
Secretary of the Interior
Department of the Interior
1849 C. Street, N.W.
Mail Stop 7060
Washington, D.C. 20240

Dear Secretary Salazar:

On behalf of the Western Governors' Association (WGA), we are writing to express concerns over recent actions by the Office of Surface Mining, Reclamation and Enforcement (OSMRE) to comprehensively revise regulations regarding stream protection under the Surface Mining Control and Reclamation Act (SMCRA). These proposed changes, called the "stream protection rule," will apply nationwide and in the agency's own words are "much broader in scope than the 2008 stream buffer zone rule." WGA is an independent, nonpartisan organization of Governors representing 19 Western states and three U.S.-flag Pacific islands. The states in our territory produce 599 million tons of coal annually, representing 56% of the total U.S. coal production.

Several of our member states who are "cooperating agencies" have delivered a letter (see attached letter dated November 23, 2010) to your Director of OSMRE expressing serious concerns about the need and justification for both the proposed rule and accompanying environmental impact statement (EIS), as well as the quality, completeness and accuracy of the chapters of the EIS that they had the opportunity to review. WGA is also concerned by the procedures used by your agency in developing the EIS to support this rule. Members who are "cooperating agencies" on the EIS feel that they have not had a meaningful opportunity to comment on its contents, given the constrained time periods for reviewing and submitting comments.

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and fn 1). Despite this limitation in the MOU, the OSMRE rules will be applied to coal mines throughout the United States, including coal-producing Western states that we represent.

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Similar statements can be found in OSMRE evaluation reports on other WGA-member states. Here is a sampling of what OSMRE said about some of the other major coal producing states in the West:

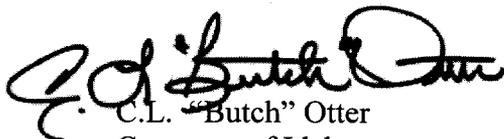
- North Dakota: "Overall, North Dakota has an excellent coal regulatory program."
- Montana: "...an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on people, land, water, or structures outside the permit area...Off-site impacts were not identified during the reporting period."
- Utah: "...site conditions indicated that the state is effectively implementing and enforcing its program."
- Texas: "...the Office of Surface Mining finds that Texas is properly administering its regulatory and abandoned mine lands programs."
- Alaska: the "DMLW [Division of Mining, Land, and Water] is effectively maintaining and administering the coal regulatory program in accordance with the Alaska Surface Coal Mining and Reclamation Act."

WGA urges you to consider these reports on Western state coal programs, evaluate the proposed regulatory changes, and consider suspending further work on their implementation so that OSMRE can re-examine the purpose and need for these rules, and provide appropriate scientific and factual information to support rule changes of this magnitude. If after such evaluation and consideration the agency determines that rule changes are necessary, we request

The Honorable Ken Salazar
February 18, 2011
Page 3

that OSMRE engage our member states and members of the public in a meaningful and substantial way.

Sincerely,



C.L. "Butch" Otter
Governor of Idaho
Chairman



Christine O. Gregoire
Governor of Washington
Vice Chair

Enclosure

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Gardner, Linda R. (Contractor)

From: Dana Dean [DANADEAN@utah.gov]
Sent: Tuesday, October 12, 2010 11:14 AM
To: Craynon, John; Pizarchik, Joseph G; Ehret, Paul
Cc: April Abate; Daron Haddock; Ingrid Campbell; James Owen; Jim Smith; Joe Helfrich; John Baza; Kevin Lundmark; Peter Brinton; Priscilla Burton; Steve Christensen
Subject: Utah's Comments - Chapter 2
Attachments: SPREISCh2_UDOGMComments_final.DOC

Director Pizarchik,

I have attached Utah's comments regarding Chapter 2 of the Stream Protection Rule Environmental Impact Statement.

We have dedicated as much time as possible to these comments, but we feel that our comments were somewhat limited by the short amount of time allowed for review.

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

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

Please let me know if you have any questions or concerns regarding our comments, and when the reconciliation meeting will take place.

Thank you,

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

Comment Form

Title of Document	Stream Protection Rule EIS Chapter 2
Contact Information	
Name	State of Utah (C/o Dana Dean or Peter Brinton)
Telephone Number	801-538-5320 or 801-538-5258
Email	<u>danadean@utah.gov</u> or <u>peterbrinton@utah.gov</u>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
General comments			<p>Utah Division of Oil, Gas, and Mining (UDOGM) thinks that more specificity and detail will be required in order to evaluate further EIS chapters.</p> <p>While UDOGM has some significant comments and suggestions for Alternatives 2 through 4, a thorough evaluation of Alternatives 2 through 4 was not performed due to time constraints. The other alternatives, including especially Alternative 5, were addressed more fully. Some components from these alternatives which are included in the Proposed Action (Alternative 5) are commented on in Alternative 5 sections.</p> <p>R645-301-356.300 UDOGM has concerns about the requirement to wait for 2 years after the last augmented seeding before removing siltation structures (sediment ponds) due to revegetation challenges in semi-arid/arid regions. Redisturbing reclaimed areas in order to remove siltation structures can cause undue damage and prolong bond release because of setbacks in vegetation establishment.</p> <p>Based on the Denver meeting with Director Pizarchik, we understood that this concern, which prompted changes in 40 CFR 434 (adding subpart h – Western</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			Alkaline Coal Mining in 2002), was to be addressed in this EIS.		
Table 2.1	2-29	---	While Table 2.1 has been helpful as a reference to compare alternatives, some significant inconsistencies between it and the text of the document were found. For example, the definition of material damage under Alternative 5 on the table is lacking details that are included in the text.		
2.2.2	2-2	9	Need the word "to" between "opportunity" and "discuss"		
2.3.1	2-3	21-25	Because the statement that "none of the selections necessarily demands another" is not accurate for all alternatives described for the elements, the terms "element alternatives", "full suite alternatives" and the "proposed action" would be less confusing than the cafeteria example. For example, alternatives 2 – 5 for Monitoring During Mining and Reclamation (Element 6) all refer to baseline sampling (Element 2).		
2.3.2	2-3	30-31	Readers would benefit by a clear identification of how the 11 elements evaluated in this EIS differ from the 11 elements described in the NOIs. For example, the element "Fish and Wildlife Protection and Enhancement" is new, and "Revegetation & Topsoil Management" replaces "Reforestation".		
2.3.2.1	2-4	13	Not all elements or their associated alternatives may be evaluated independently of other elements/alternatives. See comment for Section 2.3.1.		
2.3.2.1	2-4	15-20	This discussion appears inconsistent with the presentation of alternatives in Section 2.4. Here, there appear to be four alternatives (not five) under each element from which the proposed action is identified: Alternative 1 (No Action), Alternative 2 (most protective), Alternative 3 (less protective), and Alternative 4 (least protective).		
2.3.2.2	2-4	31-32	This sentence appears incomplete and has been difficult for us to understand. Rewording of it would be helpful.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.3.2	2-4	3-8	<p>UDOGM disagrees that there will be no "identifiable impact on the environment" caused by OSM's decision to remove the element addressing "Financial Assurance for Long Term Discharges of Parameters of Concern."</p> <p>UDOGM believes OSM should move forward with rulemaking to address Financial Assurances for Long-Term Discharges of Pollutants (Principle Element #10 from the NOIs), and that these elements should be addressed in this EIS. The text at Section 2.3.2 of the draft Chapter 2 suggests that there is uncertainty as to whether OSM will address financial assurance for long-term discharges of pollutants in the contemplated rulemaking.</p> <p>Stating that "the Performance Bonds and Financial Assurance elements" are "risk-reducing activities" and have no "identifiable impact on the environment" is missing the basic need for this element to be included in the rulemaking. By not providing the regulatory authorities a frame-work or tool to compel Operators to provide the financial assurance to cover potential long-term costs incurred from treating post-mining discharge contamination, the probability of environmental damage is raised significantly. If an Operator decides to "walk away" from a site with perpetual discharge contamination, and the bonding is inadequate to cover in perpetuity treatment costs, either tax payers will incur the costs or (given the current economic conditions of most states in this country), it is entirely possible that treatment of the contaminated discharge could cease, causing a direct and immediate impact to the environment.</p>		
2.4.2	2-5; 2-6	34-36; 1-7	Include the sampling interval here, as it is in Section 2.5.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.4.2	2-5	35	The phrase "documentation of sediment" is unclear as to what the rule is asking of permittees and specifically why it is asked (which would be helpful). Are they being asked to quantify the baseline depth and particle size of existing sediment in a stream channel, and the stream length over which it exists? Estimates of erosion for various magnitude storms? Negative biological consequences of excessive sediment? This phrase needs further explanation.		
2.4.2	2-6	5-7	Baseline data collection relative to ephemeral streams, for which there is no discussion here, has been problematic in the State of Utah. Any discussion of baseline data collection should include requirements/guidance on characterizing ephemeral streams.		
2.4.3	2-6	14-15	"is [required] to develop"		
2.4.3	2-6	15-16	In some instances, it may be inappropriate to set material damage criteria solely on federal and state water quality standards. There have been instances in Utah where baseline data collection has produced water quality values that are in excess of state and federal water quality standards prior to any mining activity. OSM should include some language in the rule to address when background conditions exceed water quality standards.		
2.4.3	2-6	22-23	UDOGM supports excluding ephemeral streams from the definition of material damage. UDOGM also recognizes that ephemeral streams can contribute to the degradation of water bodies that they discharge into.		
2.4.3	2-6	8-23	Currently, material damage is defined solely within the context of subsidence and subsidence control (30 CFR Ch. VII 784.20 and 817.121). Such a definition does not take into account adverse impacts to hydrologic resources from first mining practices (i.e. no planned subsidence). First/development mining can dewater		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			aquifers and springs as well as alter ground water flow directions resulting in significant adverse impacts. However, such impacts would not be considered "material damage" because they were not produced by subsidence. If such impacts cannot be considered "material damage", the enforcement options afforded regulatory authorities is severely limited (i.e. if there is no subsidence, there can be no material damage).		
2.4.4	2-6	27-28	In Utah, this statement does not embody the "No Action" alternative, since Utah now follows the "1983 SBZ['s] prohibition" (lines 34-35)		
2.4.5	2-7	10-11	For clarification, ephemeral streams should also be included specifically here.		
2.4.6	2-7	21-23	Regarding Alternative 2, what good is quarterly monitoring if the data are only reviewed at mid-term and permit renewal? Requiring review at permit renewal could delay, complicate, or even nullify right of successive renewal.		
2.4.7	2-7	38	Has the word not been inadvertently omitted from the sentence "current OSM regulations <u>do</u> require Corrective Action Thresholds?"		
2.4.7	2-8	1-3	Impacts from non-mining activities could impose a great financial burden on a mine, or even force a Cessation Order, but impacts resulting from the Proposed Action and other Alternatives will be addressed in Chapter 4.		
2.4.7	2-8	11	"...prior to reach[ing] material damage"		
2.4.9	2-9	14	"...the regulatory [agency] would not..."		
2.4.10	2-9	22-23	Reforestation of pinion-juniper communities - which are the native tree communities in a number of coal fields in the West - to the level of mature trees could take decades.		
2.4.10	2-9	22-23	"...establishes a bonding requirements that are triggered..."		
2.4.10	2-9	24, 27-28	A climax community of pinion-juniper or other conifers is not necessarily the preferred option. Grasses, forbs,		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			and deciduous shrubs and trees are often preferable to evergreens due to lower rates of water consumption.		
2.4.11	2-10	9-10	Here, ephemeral streams should be specifically stated as not having "enhancement requirements".		
2.5.1.1	2-10	34-35	The current definition also does not include physical channel characteristics and function (fluvial geomorphology)		
2.5.1.2	2-11	17	Should be "quantity" not "quality"		
2.5.1.2	2-11	25	Should be "quantity" not "quality"		
2.5.1.2	2-11	32	"This requirement includes a chemical analyses analysis of the coal..."		
2.5.1.4	2-12	8-10	The latest version of the Federal Rules [Revised as of July 1, 2010] does not seem to contain this requirement: "In addition, the Applicant must demonstrate to the regulatory authority that avoiding disturbance is not reasonably possible. "		
2.5.1.4	2-12	10-11	technology currently available (BCTA BTCA) "		
2.5.1.4	2-12	10-11	BTCA isn't in the acronym list, though it is defined here		
2.5.1.6	2-12	24	Should be "quantity and quality", not just "quality", as the current regulations require that monitoring programs identify monitoring parameters for both quality and quantity of surface water and groundwater based on the PHC.		
2.5.1.6	2-12	27	"are pH, [total] Fe, [total] Mn, and TDS..."		
2.5.1.6	2-12	27-28	"...or flow [and TSS] for surface water."		
2.5.1.9	2-13	9	"..there [is] a host of requirements,"		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.2.1	2-14	7-9	Although this would be very interesting information, its value in enforcing SMCRA is not evident, and it would probably detract from the obvious issues that relate to hydrology, biology, and water chemistry.		
2.5.2.2	2-14	25-30	This list of baseline parameters seems reasonable except that TDS, pH, temperature, dissolved oxygen and conductivity should be included. For the Western U.S., silica is of little value, and labs now report -HCO_3 as CaCO_3 . Boron and Oil & Grease might also be useful parameters for baseline.		
2.5.2.2	2-14	25-30	Answers to the following questions should be included: How would ephemeral streams that carry a high sediment load be effectively and consistently monitored for water quality? How would inaccessibility due to snow cover or other extenuating conditions be accommodated for the "evenly spaced" requirement?		
2.5.2.2	2-14		Definitions for "continuous" (e.g., hourly, daily) and "where practicable" should be included.		
2.5.2.3	2-15	4-12	If biological function impairment is included in the definition of material damage, biological baseline data for all stream types including ephemeral must be collected.		
2.5.2.3	2-15	7-10	Before analysis of impacts associated with Alternative #2 can occur, the definition of "impairment" needs to be made clear.		
2.5.2.3	2-15	10	"Impaired", depending on its definition, is an unrealistic standard for material damage. Streams can be "impaired" yet still function and support all pre-impairment uses.		
2.5.3.6	2-19	13-14	The wording of these passages is confusing. How can the permittee demonstrate the restoration of stream community without monitoring data? (Do you mean that monitoring does not need to be		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			formally reported until the six month period starts, or do you mean something else?)		
2.5.3.10	2-21	3-22	Reestablishing the climax native plant community is very difficult in areas that have less than 26 inches of rain per year and consist of slow growing species. These conditions characterize much of the western U.S., including Utah. For example, a pinyon/ juniper plant community may require much longer than the current ten year liability period to reach full establishment. In this example, common to Utah and other western states, the climax community is often not necessarily the most desirable for wildlife habitat management purposes, and pinyon- juniper plant communities are often treated to remove climax community trees in order to promote more sagebrush/grass areas for wildlife.		
2.4.1	2-5	26	The EPA and USACE "waters of the U.S." concept would not lead to an effective definition, and could, based on its history lead to obfuscation, confusion, and litigation. 40 CFR 230.3(s) specifically includes intermittent streams but does not mention ephemeral streams. The exclusion of ephemeral streams from this definition might be a positive feature.		
2.5.4.6	2-24	7-8	The phrase "permanently impacted" as proposed in the material damage definition for this Alternative (Alt. 4) is subject to interpretation, including the view that material damage may be/should be measured by the biological conditions of the stream. Under this interpretation, monitoring also must include biological sampling to determine impact.		
2.5.4.10	2-24, 25	29-35, 1-3	Requiring an RDPC concept as a success standard would be optimal because it would allow regulators and operators to select the best plant community for wildlife habitat to put in place after mining. This would allow for enhancement of the area when the original plant community was not necessarily the best for wildlife or the land use.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.4.10	2-25	4-6	<p>In areas with less than 26 inches of annual precipitation (which characterizes a number of coal producing areas of the western U.S.) three growing seasons is not a long enough period of time to determine if the ground cover can persist. Even if the site meets the success standard in year three, it may not be stable enough to withstand climatic events such as drought. On the other hand, the current ten year liability period is too long in some cases.</p> <p>Perhaps an alternative would be for the operator to show four or five consecutive years of ground cover equal to or exceeding the success standard. This would allow operators to apply for bond release on sites that are well established before ten years, but also ensure that a stable, permanent ground cover has been established.</p>		
2.5.5.1	2-25	29-30	<p>OSM needs to provide the <i>actual proposed definitions</i> in order for a fair assessment of the impacts to be possible.</p> <p>The proposed alternative lacks critical details necessary to evaluate the effects of the proposed definitions on the Utah Coal Regulatory Program:</p> <ul style="list-style-type: none"> • What are the proposed "expanded" definitions? • What specific "biological, hydrological and physical" characteristics will be factored into the definitions? • Must biological, hydrologic and physical characteristics all be present for a classification to be met? In Utah, some streams which are unarguably perennial from a hydrologic perspective naturally lack biological communities normally indicative of a perennial stream due to either chemical or physical habitat limitations. • Will definitions vary by region? i.e., will Utah and other western states be forced to apply stream definitions which are developed for Appalachian waterways and 		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>therefore not appropriate for our hydrologic systems?</p> <p>Utah is concerned that, in their attempt to refine the stream definitions, OSM may be introducing more ambiguity which will complicate enforcement and provide ground for more legal challenges for new permit applications. A practical example of this is our comment at Section 2.5.5.2, page 2-26, lines 5-6. Clear criteria/standards must be established (or guidance for establishing said standards) for the biological, hydrological and physical characteristics that will ultimately define the stream.</p>		
2.5.5.1	2-25	30-32	UDOGM supports OSM's proposed elimination of the 1 square mile criterion.		
2.5.5.2	2-26	2-6	<p>One year of data collection provides no information on annual variability. Utah guidance currently suggests two years of baseline data collection for surface water and groundwater. The proposed action is therefore less stringent with respect to the duration of baseline data collection.</p> <p>The water sampling appears to only include streams – what about groundwater, including springs? In Utah coal mining regions, springs are vulnerable resources which are heavily relied upon, and in some cases provide the principle source for stream flow. Water level measurements should also be included for surface water bodies.</p> <p>Whether to require baseline data collection for ephemeral streams is a contentious topic for the Utah Coal Regulatory Program.</p>		
2.5.5.2	2-26	5-6	As Alternative #5 does not require sample collections from ephemeral streams, clear guidance should be provided as to what information/criteria/conditions define an ephemeral stream.		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>Given the natural "flashy" nature of ephemeral drainages in the Book Cliffs sub-area of the Utah coal fields, which typically flow only in response to major rain events and snowmelt, sampling ephemeral drainages is simply not practicable from a safety, timing, or data quality perspective. Nonetheless, ephemeral drainages may in some cases be situated such that sampling is possible and baseline data collection is warranted. Utah therefore supports OSM in not requiring baseline data collection for all ephemeral streams; however, we would reserve the right to require baseline data on key ephemeral drainages in some instances on a permit-specific basis.</p>		
2.5.5.2	2-26	2-11	<p>Further clarification should be provided for baseline data requirements for groundwater systems. In Utah, typical ground water systems are small, isolated/perched systems; not regional or contiguous aquifers. In order for a Permittee to characterize these systems (i.e. install a minimum of 3 monitoring wells for each groundwater system), access to remote, rugged, roadless and high elevation sites would be required. In many instances, strict enforcement of the baseline requirements for groundwater would prove cost prohibitive for many coal-mining operations while doing little to protect and enhance the hydrologic balance.</p>		
2.5.5.3	2-26	13-18	<p>The definition of material damage is not clearly articulated in this section. There appear to be two components: "degraded biological conditions" and "no longer be used for designated use". OSM needs to provide a concise and specific proposed <i>definition</i> of material damage in order to make a fair assessment of what the environmental impacts would be.</p> <p>A material damage definition should take into account the pre-mining condition of a hydrologic resource. For example, Utah has been challenged in instances where</p>		

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			<p>the baseline data for a drainage demonstrates a background TDS concentration of 3,000 mg/L; however, the established water quality standard is 1,200 mg/L.</p> <p>The language in Section 2.5.5.3 is too vague, and enforcement thereof would be difficult and wide open for legal challenges. The language in Section 2.5.2.3 (Definition of Material Damage – Alternative 2) at least establishes that “impairment” is based on state water quality standards or use designations. Water quality standards are enforceable; generalities like “degraded biological conditions” invite legal challenges.</p> <p>The definition of Material Damage to the Hydrologic Balance under Alternative 5 on Table 2-1 is even more vague, as it could be interpreted that <i>any</i> adverse impact – regardless of the magnitude – would designate as material damage.</p>		
2.5.5.3	2-26	19-22	<p>Material damage is defined solely within the context of subsidence and subsidence control (30 CFR Ch. VII 784.20 and 817.121). Such a definition does not take into account adverse impacts to hydrologic resources from first mining practices (i.e. no planned subsidence). First/development mining can dewater aquifers and springs as well as alter ground water flow directions resulting in significant adverse impacts. However, such impacts would not be considered “material damage” because they were not produced by subsidence. If such impacts cannot be considered “material damage”, the enforcement options afforded regulatory authorities is limited (i.e. if there is no subsidence, there can be no material damage).</p>		
3.5.5.3	2-26	19-20	<p>The Proposed Action material damage definition only takes into account adverse impacts on perennial and intermittent streams (i.e. surface water). In Utah, ground water resources (e.g. seeps/springs) are as</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			important as surface water resources. In fact, the UDOGM has only issued one finding of material damage, and it was associated with the dewatering of a spring associated with subsidence. The definition of material damage should also be applicable for groundwater.		
2.5.5.3	2-26	19-20	The 'material damage' section should provide a detailed discussion or process for establishing a numerical or statistical threshold by which regulatory authorities can make a finding that a hydrologic resource has been materially damaged.		
2.5.5.3	2-26	20	Guidance should be given to the regulatory authority as to how to determine which water quality parameters are recommended for determining whether material damage to a hydrologic resource has occurred.		
2.5.5.3	2-26	19-20	The 'material damage' discussion should identify when it's appropriate for a regulatory authority to make a finding that material damage has occurred. Does the regulatory authority make a material damage finding immediately upon determining that a water quality, water quantity or designated use threshold has been exceeded or must these thresholds be exceeded for some period of time? Should the regulatory authorities allow the Permittee time to mitigate/repair a hydrologic resource before making a finding of material damage and if so, how much time should Permittees be reasonably allowed?		
2.5.5.4	2-26	28	Is the intent here for the post-mining use and ecological function to be the same as pre-mining conditions? Or are no effects to be allowed during mining and post-mining?		
2.5.5.4	2-26	32-33	Please clarify whether "not reduce biological conditions" refers to outside the permit area or both inside and outside the permit area. This is another example of OSM needing to provide more clear language in order for Utah to evaluate the environmental impacts		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			<p>associated with the proposed rulemaking.</p> <p>For example, in Utah the majority of mining operations are underground with surface facilities located in steep and narrow canyons. In order to provide sufficient area for surface facilities and in order to protect "undisturbed" drainage from above the surface facilities, culverts are used for stream bypasses. These culverts could easily be construed as "reducing biological conditions", although only within the permit area.</p>		
2.5.5.4	2-26	23-41	<p>Further clarification as to what 'mining activity' is would be helpful. Would 'mining activity' include underground coal-mining operations? How would a regulatory agency "ensure that intermittent and perennial streams continue to have necessary amounts of base flow" without exploring potential impacts from underground mining activity?</p> <p>One of the most contentious and difficult issues that the State of Utah contends with is the undermining and impact to springs/seeps. These springs/seeps provide the base flow to these intermittent and perennial streams of which local communities rely on for their culinary water. Underground mining operations have impacted springs/seeps which in turn, have caused reductions in recharge to intermittent and perennial streams. The Activities In or Near Streams element should clarify/define what is considered mining activity (i.e. strictly above ground or extending to the underground mine workings as well).</p>		
2.5.5.5	2-27	6-7	<p>Guidance should be provided that identifies the level of information/detail that would be necessary for a regulatory agency to make a finding that the Permittee has demonstrated that a stream's form and function could be restored.</p>		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
2.5.5.5	2-27	6-7	Further clarification is needed as to whether "mining through streams" refers to surface mining solely or whether underground mining would be considered as well.		
2.5.5.6	2-27	15-21	The wording of these passages is very confusing to us. We don't know how to comment. Please add clearer wording. How can the permittee demonstrate the restoration of stream community without monitoring data? (Do you mean that monitoring does not need to be formally reported until the six month period starts, or do you mean something else?)		
2.5.5.7	2-27	25-27	Guidance as to how a regulatory authority would set Corrective Action Thresholds would be necessary in order to adopt Alternative #5.		
2.5.5.10	2-28	19-27	Reestablishing the climax native plant community is very difficult in areas that have less than 26 inches of rain per year and consist of slow growing species. These conditions characterize much of the western U.S., including Utah. For example, a pinyon/ juniper plant community may require much longer than the current ten year liability period to reach full establishment. In this example, common to Utah and other western states, the climax community is often not necessarily the most desirable for wildlife habitat management purposes, and pinyon- juniper plant communities are often treated to remove climax community trees in order to promote more sagebrush/grass areas for wildlife.		
2.5.5.10	2-28		R645-301-356.300 UDOGM has concerns about the requirement to wait for 2 years after the last augmented seeding before removing siltation structures (sediment ponds) due to revegetation challenges in semi-arid/arid regions. Redisturbing reclaimed areas in order to remove siltation structures can cause undue damage and prolong bond release because of setbacks in vegetation establishment. . Based on the Denver		

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
			meeting with Director Pizarchik, we understood that this concern, which prompted changes in 40 CFR 434 (adding subpart h – Western Alkaline Coal Mining in 2002), was to be addressed in this EIS.		
2.5.5.11	2-28	29	Under the Proposed Action, enhancement activities will be required “when the mining operation results in stream impacts” (Alternative 2 – Section 2.5.2.11). Neither “mining operations” nor “stream impacts” are defined by SMCRA. Will “mining operations” include subsidence from underground coal mining? Is “stream impacts” the same as material damage or does this mean <i>any</i> impact? OSM needs to provide a more specific description or use defined terminology in order for an evaluation of the Proposed Action to be possible.		
2.6.1	2-31	32-36	The State of Utah supports OSM efforts to expressly require operators to provide bonding to cover long-term water treatment, but believes OSM should include this action in this EIS.		
2.6.1	2-32	1-2	OSM is apparently considering allowing Phase III Bond Release in arid and semiarid areas even if “adverse trends are detected”. As an arid and semiarid area by definition, Utah has concerns that changes being considered will not safeguard the environment and will weaken our ability to ensure successful reclamation following coal mining activities.		
2.6.2	2-32	16-28	UDOGM supports OSM efforts to codify a requirement for operators to post financial assurance (e.g., trust funds) adequate to treat long term pollutant discharges.		

Note: The Incorporate (Yes/No) and Proposed Disposition columns will be completed by the originating office.

Gardner, Linda R. (Contractor)

From: Greg Conrad [gconrad@imcc.isa.us]
Sent: Tuesday, November 23, 2010 8:58 AM
To: Pizarchik, Joseph G
Cc: Craynon, John; Ehret, Paul
Subject: Letter re Drat EIS Process
Attachments: Pizarchik Letter re Draft EIS.doc

Joe:

The attached letter is being placed in the U.S. Mail to you today, but I wanted you to have an electronic copy ASAP. Montana had hoped to sign as well, but was unable to secure full clearance. They will likely send a separate letter. Should you have any questions, please contact the cooperating state agencies.

Greg

Gregory E. Conrad
Executive Director
Interstate Mining Compact Commission
445A Carlisle Drive
Herndon, VA 20170
Ph: 703.709.8654
Fax: 703.709.8655
Email: gconrad@imcc.isa.us
Website: www.imcc.isa.us



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.¹

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.

¹ 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,



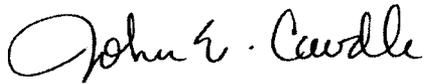
Randall C. Johnson
Director
Alabama Surface Mining Commission



Bruce Stevens
Director
Division of Reclamation
Indiana Department of Natural Resources



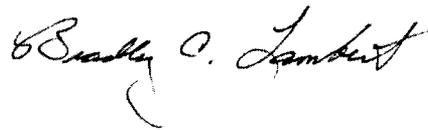
Carl E. Campbell
Commissioner
Kentucky Department for Natural Resources



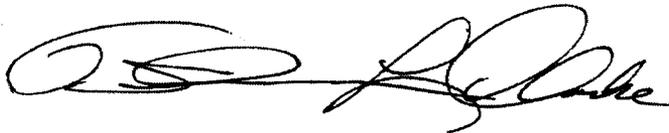
John Caudle
Director
Surface Mining and Reclamation Division
Railroad Commission of Texas



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

Gardner, Linda R. (Contractor)

From: Adams, Gail A
Sent: Monday, February 28, 2011 8:53 AM
To: Davis, Laura; Lee-Ashley, Matt; Iudicello, Fay; Pizarchik, Joseph G; Ishee, Mary Katherine
Subject: FW: WGA OSM Letter
Attachments: osm-ltr2-27-2011.pdf

FYI...This letter is on the way from WGA.

Gail Adams
Director
Intergovernmental Affairs
U.S. Department of the Interior
(202) 208-6649

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

From: Rupp, Mark (GOV) [<mailto:mark.rupp@gov.wa.gov>]
Sent: Sunday, February 27, 2011 2:05 PM
To: Faeth, Lori; Adams, Gail A
Subject: Fw: WGA OSM Letter



**WESTERN
GOVERNORS'
ASSOCIATION**

C.L. "Butch" Otter
Governor of Idaho
Chairman

Christine O. Gregoire
Governor of Washington
Vice Chair

Pam O. Inmann
Executive Director

Headquarters:
1600 Broadway
Suite 1700
Denver, CO 80202

303-623-9378
Fax 303-534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001

202-624-5402
Fax 202-624-7707

www.westgov.org

February 27, 2011

The Honorable Ken Salazar
Secretary of the Interior
Department of the Interior
1849 C. Street, N.W.
Mail Stop 7060
Washington, D.C. 20240

Dear Secretary Salazar:

On behalf of the Western Governors' Association (WGA), we are writing to express concerns over recent actions by the Office of Surface Mining, Reclamation and Enforcement (OSMRE) to comprehensively revise regulations regarding stream protection under the Surface Mining Control and Reclamation Act (SMCRA). These proposed changes, called the "stream protection rule," will apply nationwide and in the agency's own words are "much broader in scope than the 2008 stream buffer zone rule." WGA is an independent, nonpartisan organization of Governors representing 19 Western states and three U.S.-flag Pacific islands. The states in our territory produce 599 million tons of coal annually, representing 56% of the total U.S. coal production.

Several of our member states who are "cooperating agencies" have delivered a letter (see attached letter dated November 23, 2010) to your Director of OSMRE expressing serious concerns about the need and justification for both the proposed rule and accompanying environmental impact statement (EIS), as well as the quality, completeness and accuracy of the chapters of the EIS that they had the opportunity to review. WGA is also concerned by the procedures used by your agency in developing the EIS to support this rule. Members who are "cooperating agencies" on the EIS feel that they have not had a meaningful opportunity to comment on its contents, given the constrained time periods for reviewing and submitting comments.

WGA feels that the OSMRE has not provided a sufficient basis to support the need for sweeping regulatory changes. In fact, one of the primary justifications put forward by the agency in its Federal Register notice is a June 11, 2009 memorandum of understanding (MOU) between the Administrator of the U.S. Environmental Protection Agency, the Acting Assistant Secretary of the Army, and you. However, the MOU was specifically targeted at "Appalachian Surface Coal Mining," which expressly refers to mining techniques requiring permits under both the Surface Mining Control and Reclamation Act (SMCRA) and Section 404 of the Clean Water Act (CWA), in the states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia." (See MOU at p. 1

and fn 1). Despite this limitation in the MOU, the OSMRE rules will be applied to coal mines throughout the United States, including coal-producing Western states that we represent.

Likewise, the agency has not provided objective data to support such comprehensive regulatory changes. OSMRE's most recent annual evaluation reports for Western states for 2010 strongly suggest otherwise. For example, the report for Wyoming, which produces more coal than any other state in the U.S. (almost 40% of the nation's total), says that: "...the Wyoming program is being carried out in an effective manner." The report also demonstrates significant and steady progress in reclamation, showing that the ratio of reclaimed to disturbed acres has steadily increased from 10% in 1988 to 45% in 2010. The report also stated that the state ensured that backfilled and graded areas will be returned to approximate original contour, that there have not been any public complaints about bonding, and that Wyoming has not had any bond forfeitures in recent years. Finally, despite OSMRE's insistence on a 78% increase in inspections, no enforcement actions were taken by OSMRE during 2009 or 2010. In OSMRE's own words, "this lack of additional enforcement actions, despite increased inspection frequency, helps to illustrate the effectiveness of the Wyoming's regulatory program."

Similar statements can be found in OSMRE evaluation reports on other WGA-member states. Here is a sampling of what OSMRE said about some of the other major coal producing states in the West:

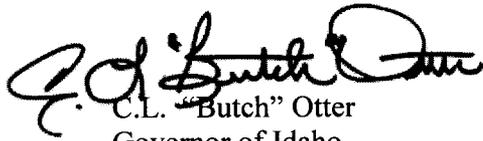
- North Dakota: "Overall, North Dakota has an excellent coal regulatory program."
- Montana: "...an off-site impact is defined as anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on people, land, water, or structures outside the permit area...Off-site impacts were not identified during the reporting period."
- Utah: "...site conditions indicated that the state is effectively implementing and enforcing its program."
- Texas: "...the Office of Surface Mining finds that Texas is properly administering its regulatory and abandoned mine lands programs."
- Alaska: the "DMLW [Division of Mining, Land, and Water] is effectively maintaining and administering the coal regulatory program in accordance with the Alaska Surface Coal Mining and Reclamation Act."

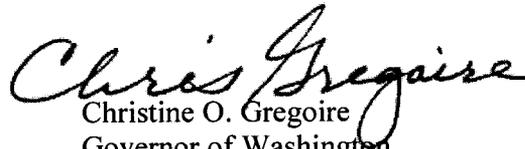
WGA urges you to consider these reports on Western state coal programs, evaluate the proposed regulatory changes, and consider suspending further work on their implementation so that OSMRE can re-examine the purpose and need for these rules, and provide appropriate scientific and factual information to support rule changes of this magnitude. If after such evaluation and consideration the agency determines that rule changes are necessary, we request

The Honorable Ken Salazar
February 27, 2011
Page 3

that OSMRE engage our member states and members of the public in a meaningful and substantial way.

Sincerely,


C.L. "Butch" Otter
Governor of Idaho
Chairman


Christine O. Gregoire
Governor of Washington
Vice Chair

Enclosure

F:\11resos\osm-ltr-feb2011.doc

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

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Sincerely,



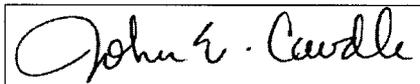
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Division of Reclamation
Indiana Department of Natural Resources



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Commissioner
Kentucky Department for Natural Resources

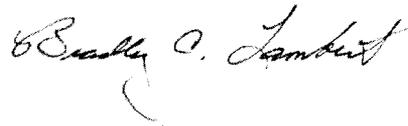


John Caudle
Director
Surface Mining and Reclamation Division
Railroad Commission of Texas



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

Gardner, Linda R. (Contractor)

From: Varvell, Stephanie L.
Sent: Thursday, January 27, 2011 10:14 AM
To: Pizarchik, Joseph G
Subject: Fw: this just forwarded to me
Attachments: DOC012611.pdf

From: Jose Sosa [<mailto:jose@polukaiservices.com>]
Sent: Thursday, January 27, 2011 07:35 AM
To: Sloanhoffer, Nancy E.; Varvell, Stephanie L.
Subject: FW: this just forwarded to me

Fyi. John C. should have this correspondence by now.

From: Jeff Baird [<mailto:jbaird@engrservices.com>]
Sent: Thursday, January 27, 2011 9:18 AM
To: John Maxwell; '(spr@engrservices.com)'; Caroline Bari; 'David Bell'; 'Donald Iannone'; 'Doug Mynear'; 'Edmundo Laporte'; 'J Steven Gardner'; Jaque Mitchell; 'Jenkins, Josh'; 'jmahan@plexsci.com'; 'jmorgan@morganworldwide.com'; 'Joe Zaluski'; Jose Sosa; 'Kathy Kelly'; 'Liz Edmondson'; 'Mike Stanwood'; Randy Sosa; 'Shortelle, Ann'; 'Singer, Robert'
Subject: RE: this just forwarded to me

In that same vein, see the attached letter and Chapter 4 comments from the WVDEP to OSM.

Jeffrey C. Baird
Senior Project Coordinator
ECSI, LLC
340 South Broadway, Suite 200
Lexington, KY 40508

859-233-2103
859-259-3394 (fax)
859-230-1968 (mobile)
jbaird@engrservices.com
www.engrservices.com

From: John Maxwell [<mailto:JMaxwell@polukaiservices.com>]
Sent: Thursday, January 27, 2011 9:00 AM
To: (spr@engrservices.com); Caroline Bari; David Bell; Donald Iannone; Doug Mynear; Edmundo Laporte; J Steven Gardner; Jaque Mitchell; Jeff Baird; Jenkins, Josh; 'jmahan@plexsci.com'; 'jmorgan@morganworldwide.com'; Joe Zaluski; John Maxwell; Jose Sosa; Kathy Kelly; Liz Edmondson; Mike Stanwood; Randy Sosa; Shortelle, Ann; Singer, Robert
Subject: FW: this just forwarded to me

From: Jose Sosa
Sent: Thursday, January 27, 2011 8:54 AM
To: John Maxwell; Randy Sosa; Mike Stanwood; Caroline Bari
Subject: FW: this just forwarded to me

Fyi. Please distribute to the PKS Team. Make sure that everyone understands that no one is to talk to the press regarding this project. We need to direct to OSM public affairs office.

Jose

From: Varvell, Stephanie L. [mailto:svarvell@osmre.gov]
Sent: Thursday, January 27, 2011 6:38 AM
To: Jose Sosa
Subject: Fw: this just forwarded to me

Fyi

From: Mali, Peter L.
Sent: Wednesday, January 26, 2011 04:48 PM
To: Sloanhoffer, Nancy E.; Varvell, Stephanie L.
Subject: Fw: this just forwarded to me

Nancy and Stephanie:

FYI: see AP article below. Please inform the contractor and subs that any media inquiries should be directed to the OC: 202-208-2565.

Thanks,

Peter

From: Mali, Peter L.
Sent: Wednesday, January 26, 2011 03:29 PM
To: Pizarchik, Joseph G
Subject: Fw: this just forwarded to me

This goes without saying, but I also wanted to mention this article to you for your meeting tomorrow with ASLM.

From: Mali, Peter L.
Sent: Wednesday, January 26, 2011 03:28 PM
To: Pizarchik, Joseph G; Owens, Glenda H.
Cc: Ishee, Mary Katherine; Holmes, Christopher J; 'mtachris@hotmail.com' <mtachris@hotmail.com>; Bandy, Earl D.
Subject: Fw: this just forwarded to me

Joe and Glenda:

Below is an AP article that Earl Bandy sent to me, and that I just opened.

I'll alert OCO and OCL to this article, but I wanted to let you know that this news is out there.

Peter

From: Bandy, Earl D.
Sent: Wednesday, January 26, 2011 03:02 PM
To: Fillpot, Dirk; Mali, Peter L.
Subject: this just forwarded to me

<http://www.google.com/hostednews/ap/article/ALeqM5j4JC7Gs3f7cpoJMK1xc-iveOoZ7Q?docId=1b0c534404754dc7a452ff23f9b3194d>

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west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street SE
Charleston, WV 25304
Office: 304-926-0490 Fax: 304-926-0456

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

January 26, 2011

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

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

Dear Mr. Craynon:

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

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

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

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

Promoting a healthy environment.

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

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

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

We understand that OSM's preferred alternative 5 would:

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

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

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

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

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

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

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

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

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

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

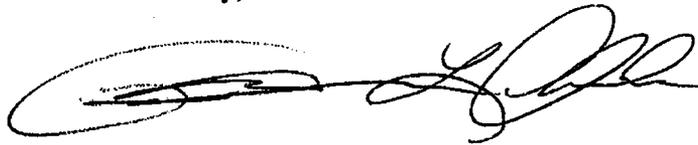
OSM's EIS and proposal eliminates jobs and economic growth in the Appalachian basin. There is no demonstrable benefit to public health, welfare, safety, or the environment OSM has identified. As discussed above, OSM's procedure is designed to eliminate the possibility of meaningful outside participation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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Clarke', with a large, sweeping flourish that loops back under the name.

Thomas L. Clarke

Comment Form

Title of Document	Chapter 4 Environmental Consequences
Contact Information	
Name	Lewis Halstead and Russ Hunter
Telephone Number	304-926-0490
Email	<u>lewis.a.halstead@wv.gov</u> or <u>russ.m.hunter@wv.gov</u>

Section	Page #s	Line #s	Comment	Incorporate (Yes/No)	Proposed Disposition
4.1.2.1.1	4-6	12-15	Some states have material damage criteria and 'or thresholds. You make it sound as if there are none.		
4.1.2.1	4-6	19-24	"continue to be permitted in all streams" and "Because placemetr... must be avoided to the extent possible " seem contradictory. This whole section is confusing.		
4.1.2	4-7	6-7	I thought this wavs the no action alternative, but you are talking aobut changes?		
		22-30	WV has a policy that applies to contour mining. This is not a no action alternative if those changes are being proposed .		
4.1.3	4-11	16	Please explain how this normalization took place. Our calculations cannot arrive at this much difference in acres.		
4.1.3.1.1.2	4-12	4-16	These downward trends in the Appalachia are being driven by the federal government with changes in the way EPA has done business in the last two years.		
4.1.3.1.1.2	4-12	27-28	Where can the initial assessment of the FPOP be viewed?		
4.1.3.1.1.3	4-15	11	Underground mining doesn't affect groundwater primarily through blasting activity.		
4.1.4	4-29	13-16	Local extinctions of Brook Trout?		
4.5.1.1	4-196	10-14	How can you say that langwall operations could be negatively impacted in those regions that contain high populations of		

Gardner, Linda R. (Contractor)

From: Ishee, Mary Katherine
Sent: Wednesday, December 22, 2010 7:26 PM
To: Pizarchik, Joseph G
Subject: FW: Letter from Seven State Cooperating Agencies
Attachments: Pizarchik Letter re Draft EIS.doc

Importance: High

Fyi.

From: Mali, Peter L.
Sent: Thursday, December 09, 2010 12:51 PM
To: Ishee, Mary Katherine
Cc: Jeter, Joyce A.; Craynon, John; Holmes, Christopher J
Subject: Letter from Seven State Cooperating Agencies
Importance: High

MK:

As requested, here is the letter from seven of the state cooperating agencies on the SPR EIS.

Peter

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.¹

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.

¹ 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



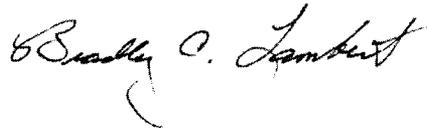
Carl E. Campbell
Commissioner
Kentucky Department for Natural Resources



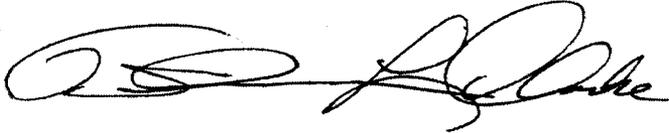
John Caudle
Director
Surface Mining and Reclamation Division
Railroad Commission of Texas



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

Gardner, Linda R. (Contractor)

From: Varvell, Stephanie L.
Sent: Monday, October 25, 2010 9:19 AM
To: Winters, William R. "Bill"; Bandy, Earl D.; Barchenger, Ervin; Blackburn, Joseph L. "Joe"; Bovard, Tom; Boyd, Khalia A.; Braxton, Patrick L.; Buckley, Richard W. "Rick"; Calhoun, Roger W.; Calle, Marcelo; Clark, Paul; Clayborne, Alfred L.; Coker, Jeffrey A. "Jeff"; Coleman-Quinn, Marie; Craynon, John; Dale, Debbie; DeVito, Andy; Dye, Jr., Ian B.; Ehret, Paul; Evans, Robert S. "Bob"; Fleischman, Jeffrey W.; Fulton, James; Garnett, Kevin W.; Hartos, David G. "Dave"; Holbrook, Richard; Holmes, Christopher J; Joseph, Bill; Klein, Al; Loges, Brian W.; Mali, Peter L.; McIlwain, Patruzzelli D.; McKenzie, Robert M. "Bob"; Means, Brent P.; Meier, Len; Mitchell, Maria M.; Owens, Ben H.; Owens, Glenda H.; Patrice Simms; Payne, Harry J.; Pizarchik, Joseph G; Poole-Walker, Angie; Postle, Bob; Ramsey, Elaine; Rice, Dennis; Richmond, Mike W. "Mike"; Rideout, Sterling; Rieger, George J.; Robinson, Michael K. "Mike"; Rockwell, Joshua; Russell Young ; Schrum, Daniel L. "Dan"; Shope, Thomas D. "Tom"; Sloanhoffer, Nancy E.; Smith, Gail; Stokes, Ruth; Stoltz, Jason R.; Sylvester, Cheryl; Taitt, James M. "Jim"; Trelease, John A; Uranowski, Lois J.; Weaver, Hugh V. "Vann"; Wilson, Sherry; Yellowman, Mychal
Subject: EIS Contract Weekly Report for week ending Oct 22
Attachments: EIS Contract Weekly Report 10222010.pdf

Stephanie Varvell
859-260-3925

Environment Impact Statement Support Services Contract
Weekly Status Report on Project Plan Items
For week ending 10/22/2010

Project Manager: Stephanie Varvell

Milestones	Planned Dates	Actual Dates	Comments
Draft RIA	10/18/2010	10/18/2010	To reviewers 10/22/10 Comments due 10/29/10
CH 3	10/22/2010	10/25/10 (partial)	Posted on Sharepoint for download & comment- due back 11/1 (noon)
CH3	10/29/2010 (remaining)		Hydrology section & tables

Accomplished this week

Met with Director and HQ staff on 10/22 to review quality issues and adjust schedule.

Planned for next week

Meet with contractors about integrated team approach.
Adjust schedule to accommodate new team approach.

Issues / Risks Identified: None noted.