

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

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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

**Tuesday, July 23, 2013
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Wittman, Thompson, Lummis, Gosar, Cramer, Huffman, Cárdenas, and Garcia.

Also Present: Representative Johnson of Ohio.

Mr. LAMBORN. The Committee will come to order. The Chairman notes the presence of a quorum, which, under Rule 3(e), is two Members.

The Subcommittee on Energy and Mineral Resources is meeting today to hear testimony on an oversight hearing titled, “War on Jobs: Examining the Operations of the Office of Surface Mining and the Status of the Stream Buffer Zone Rule.”

Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee. However, I ask unanimous consent to include any other Members’ opening statements in the hearing record if submitted to the clerk by close of business today.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

I also ask unanimous consent that Representative Bill Johnson of Ohio, a former member of this Committee, be allowed to participate in today’s hearing.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered. I now recognize myself for 5 minutes.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. The people of the United States are desperate for jobs, as we now enter our 5th year of the Obama economy. In light of this, the President tomorrow will travel to Illinois to give a campaign speech calling for more action on jobs. Yet the American people do not need more rhetoric, especially when the agencies and departments of his Administration are going forward with their war on jobs and job creators.

Some of the hardest hit have been our American coal miners. The coal industry lost 4,000 workers between 2011 and 2012. These

workers are simply pleading for the Administration to stop the ongoing war on jobs and embrace a real agenda of job creation. Hence the Committee's focus on the Obama Administration's ongoing rewrite of a coal production regulation, the 2008 Stream Buffer Zone Rule.

This rule was tossed out by the Obama Administration days after taking office, and never fully implemented, simply because they did not like it. In fact, in the Office of Surface Mining's June 18, 2010 Federal Register notice announcing the new stream protection rule, OSM Director Pizarchik, who we are going to hear from soon, thank you for being here, stated, "We have already decided to change the rule following the change of Administrations on January 20, 2009."

Initially, the Administration tried to illegally vacate the rule. However, the court determined that doing so without public notice and comment would violate the Administrative Procedures Act, and said that OSM could only change or revoke the regulations by going through a formal rulemaking process.

So, instead, the Department reached an out-of-court settlement with environmental groups, agreeing to an expedited timeframe for writing the rule. It was supposed to be issued by February 28, 2011, 2½ years ago. This is a glaring example of the non-transparent policy of sue-and-settle, driving the development of public policy. Unfortunately, this settlement and the decision to discard years of work and create a new rule got caught up in the Administration's failure to responsibly manage the process.

When the results of this reckless rewrite became public, including projections of massive job losses, reprogramming of State monies to pay for the rule, failure to responsibly consult with States and Tribes, and, finally, the controversial firing of the contractors initially hired to facilitate the rewrite, this Committee initiated its ongoing investigation into the matter.

Let's be clear about the Administration's legacy on this effort. So far, the Administration has spent nearly \$9 million rewriting a rule that was never implemented. That is an important point, since the 2008 rule was never enacted so that the Administration can't actually say what the problems are with it that would need to be addressed with a new rule.

Furthermore, the ongoing inability to actually conduct rule-making means the draft of the rewrite isn't anticipated until late in 2014. Maybe that is why in late January 2013 environmental groups announced that they were reopening their lawsuit on the 2008 Stream Buffer Zone Rule, since the Department has missed all the agreed-upon deadlines. Since that announcement, this Committee, as part of our ongoing investigation, sent two letters requesting information about the Department's communications with the Plaintiffs and the status of the litigation. Five months later, we received some of the documents requested.

However, as I pointed out to Secretary Jewell last week, these documents are not useful, due to their extensive redactions. And in an ongoing pattern of deception, the Department forgot to mention that they were filing documents with the court just last Wednesday.

Apparently, the Department does not understand that this Committee has a constitutional duty to conduct proper oversight. By not complying with the Committee's request for information and subpoenas, treating them as FOIA requests, which they are not, this is the opposite of the so-called transparency and openness goals of this Administration. Everything associated with the re-write of the 2008 Stream Buffer Zone Rule has been secretive, reckless, wasteful, and unnecessary.

Meanwhile, coal miners are losing jobs. The regulatory uncertainty is stifling investment and leaving our partner States to issue permits with a 1983 law that does need some refinement. Tomorrow, when the President calls on new policies for creating jobs, his first call should be to stop the reckless Office of Surface Mining Rulemaking and restore certainty to our miners.

[The prepared statement of Mr. Lamborn follows:]

**Statement of The Honorable Doug Lamborn, Chairman,
Subcommittee on Energy and Mineral Resources**

The people of the United States are desperate for jobs as we now enter our fifth year of the Obama economy. In light of this, the President tomorrow will travel to Illinois to hold a campaign speech calling for more action on jobs. Yet the American people do not need more empty rhetoric, especially when the agencies and Departments of his Administration will continue forward with their war on jobs and job creators.

Some of the hardest hit have been our American coal miners—the coal industry lost 4,000 workers between 2011 and 2012. These workers are simply pleading for the Administration to stop the ongoing war on jobs and embrace a real agenda of job creation.

Hence the Committee's focus on the Obama Administration's ongoing re-write of a coal production regulation, the 2008 Stream Buffer Zone Rule. This rule was tossed out by the Obama Administration days after taking office and never fully implemented because they simply decided they didn't like it.

In fact, in the Office of Surface Mining's June 18, 2010 Federal Register Notice announcing the new "Stream Protection Rule" OSM Director Pizarchik stated: "we had already decided to change the rule following the change of Administrations on January 20, 2009."

Initially, the Administration tried to illegally vacate the rule, however the court determined that doing so without public notice and comment would violate the Administrative Procedures Act, and said that OSM could only change or revoke the regulations by going through a formal rule making process.

So instead, the Department reached an out-of-court settlement with environmental groups agreeing to an expedited time frame for writing the rule—it was supposed to be issued by February 28, 2011—two and a half years ago; a stellar example of the non-transparent practice of Sue and Settle driving the development of public policy.

Unfortunately, this settlement and the decision to discard years of work and create a new rule ran into the Administration's failure to responsibly manage the process. When the results of this reckless re-write became public—including projections of massive job losses, reprogramming of State monies to pay for the rule, failure to responsibly consult with states and tribes, and finally the firing of the contractors hired to facilitate the re-write of the rule—the Committee initiated its on-going investigation into the matter.

Let's be clear about the Administration's legacy on this effort. So far the Administration has spent nearly \$9 million taxpayer dollars re-writing a rule that was never implemented. That is an important point because since the 2008 rule was never enacted the Administration actually has no idea if there are any problems with the rule that might need to be addressed with a new rule. Furthermore the ongoing inability to actually conduct rulemaking means the draft of the re-write isn't anticipated until late in 2014.

Maybe that's why in late January 2013 environmental groups announced that they were reopening their lawsuit on the 2008 'Stream Buffer Zone Rule' since the Department has missed all of the agreed upon deadlines.

Since that announcement, the Committee as part of our ongoing investigation sent two letters requesting information about the Department's communications with the plaintiffs and the status of the litigation.

Five months later we received some of the documents requested. However, as I pointed out to Secretary Jewell last week, these documents are not particularly useful due to the extensive redactions. And in an ongoing pattern of deception, somehow the Department forgot to mention that they were filing documents with the court just last Wednesday.

Apparently the Department, including Secretary Jewell, does not understand that this Committee has a constitutional duty to conduct proper oversight.

By not complying with the Committee's requests for information and Subpoenas—treating them as FOIA requests, which they are not, is the opposite of the “Transparency and Openness goals” of this Administration.

Everything associated with the re-write of the 2008 rule has been secretive, reckless and wasteful.

Meanwhile, coal miners are losing jobs; the regulatory uncertainty is stifling investment and leaving our partner states to permit with a 1983 law that needs some refinement. Tomorrow when the President calls on new policies for creating jobs, his first call should be to stop the reckless OSM rulemaking and restore certainty to our miners.

Mr. LAMBORN. I would now like to recognize the Ranking Member, Acting Ranking Member.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Mr. Chairman. Today's hearing continues a more than 2-year effort by the Committee Majority to stop the Office of Surface Mining from protecting Appalachian streams and communities from destructive mountaintop removal mining.

I think it is important to remember what this mountaintop removal process is all about. Waste from mountaintop removal mining has buried or despoiled 2,000 miles of Appalachian streams over the last 30 years. New research also links this type of mining with cancer, birth defects, lung and heart disease, and other adverse health effects. Nonetheless, President George W. Bush and his Administration issued a midnight regulation that loosened Reagan-era restrictions on the dumping of mining waste in or near streams.

Now, the Majority blames OSM, the Office of Surface Mining, and the Obama Administration for acting to fix the Bush rule. But the blame really should lie with the Bush Administration, which failed to provide either a reasoned explanation or an evidentiary basis for its action. They ignored evidence of adverse environmental impacts and claimed, without supporting evidence, that their rule would “positively impact the environment.” The Bush rule was likely to be thrown out in court for all of these reasons.

Now, with the Appalachian region dangerously exposed to the ravages of mountaintop removal mining, the Obama Administration had no choice but to initiate a new rulemaking to revise the Bush Administration's rule. Now, the Majority has charged that OSM has recklessly rushed this rulemaking. So let's step back for a moment and talk about where this process actually stands.

OSM has been analyzing and deliberating over options for a new stream protection rule for the last 3 years. During that time, OSM has overseen unprecedented outreach sessions with coal companies and other stakeholders, and solicited comments from the public, which the Agency was under no requirement to do at this early

stage. The Agency has already received more than 50,000 comments on its stream protection rulemaking.

Now, this is more comments, by the way, than were received during the entire Bush rulemaking, even though OSM has not even issued a proposed rule yet. That is right. Despite the Majority's claims about the dire consequences of a new stream protection rule, despite the loaded title of this hearing, "The War on Jobs," OSM hasn't even issued a proposed rule and supporting analysis that could form the basis for any serious critique.

Once a proposed rule is actually issued, this Committee can have a reasoned debate about what the proposed rule would and wouldn't do. Members of the public, including coal companies, would have a chance to weigh in and offer their perspective. And OSM will be required to consider these outside perspectives, and may adjust its proposed rulemaking based on that input before adopting a final rule that actually has the force of law. But at this point the Committee Majority is just making blind assertions about the consequences of a rule that doesn't exist and which no one has seen.

Now, let me say a few words about the Majority's investigation into this rulemaking. We, in the Minority, believe that congressional oversight is actually vital to a well-functioning government. But the Majority's endless and frivolous document requests are wasting taxpayers' money, and diverting OSM and the Interior Department from their core responsibilities of serving the American people.

The Interior Department has already produced more than 14,000 pages of documents in response to the Majority's inquiries. The Majority has also received documents from the Office of Management and Budget, the EPA, the Army Corps of Engineers. And contractors that worked on the rulemaking have provided almost 7,000 pages of documents and roughly 25 hours of audio recordings of meetings with OSM officials. In all of these materials, there is no evidence that OSM or the Administration have done anything improper.

In fact, the documents refute the Majority's allegations, as shown in a report from the Committee's Democratic staff last year. And the Majority was unable to find anything significant in all those hours of audio tape. The few snippets of tape used by the Majority to attack stream protection rulemaking have been flagrantly misrepresented, as discussed the last time Mr. Pizarchik was before this Committee.

Committee Republicans should end their wasteful and baseless investigation, and make their case on the merits. Why should we continue allowing mountaintop removal mining to bury hundreds of miles of Appalachian streams, destroy mountain towns, and threaten people in the region with cancer, lung and heart disease, and other problems? We in the Minority welcome that debate.

But we should see what OSM actually proposes first. Today's hearing is a premature sideshow.

And I yield back.

[The prepared statement of Mr. Huffman follows:]

**Statement of The Honorable Jared Huffman, a Representative
in Congress from the State of California**

Thank you Mr. Chairman. Today's hearing continues a more than two-year effort by the Committee Majority to stop the Office of Surface Mining from protecting Appalachian streams and communities from destructive mountaintop removal mining.

Waste from mountaintop removal mining has buried or despoiled nearly 2,000 miles of Appalachian streams over the last 30 years. New research also links this type of mining with cancer, birth defects, lung and heart disease, and other adverse health effects. Nonetheless, the George W. Bush administration issued a midnight regulation that loosened Reagan-era restrictions on the dumping of mining waste in or near streams.

The Majority blames OSM and the Obama administration for acting to fix the Bush rule. But blame should lie with the Bush administration, which failed to provide either a reasoned explanation or an evidentiary basis for its action, ignored evidence of adverse environmental impacts, and claimed without supporting evidence that the rule would "positively impact the environment." The Bush rule was likely to be thrown out in court for these reasons.

With the Appalachia region dangerously exposed to the ravages of mountaintop removal mining, the Obama administration had no choice but to initiate a new rulemaking to revise the Bush rule.

The Majority has charged that OSM has "recklessly rushed" this rulemaking, so let's step back now and talk about where the process stands.

OSM has been analyzing and deliberating over options for a new Stream Protection rule for the last three years. During that time, OSM has overseen unprecedented outreach sessions with coal companies and other stakeholders and solicited comments from the public, which the agency was under no requirement to do at this early stage. OSM has already received more than 50,000 public comments on its Stream Protection rulemaking.

This is more comments, by the way, than were received during the entire Bush rulemaking, even though OSM has not issued a proposed rule yet.

That's right: Despite the Majority's claims about the dire consequences of a new Stream Protection rule, OSM hasn't even issued a proposed rule and supporting analysis that could form the basis of critique.

Once a proposed rule is issued, this Committee can have a reasoned debate about what the proposal will and won't do. Members of the public, including coal companies, will have a chance to weigh in and offer their perspectives. And OSM will be required to consider these outside perspectives—and may adjust its proposal based on that input—before adopting a final rule that has the force of law.

At this point, however, the Committee Majority is just making blind assertions about the consequences of a rule that doesn't exist and no one has seen.

Now let me say a few words about the Majority's investigation into this rulemaking. We in the Minority believe that congressional oversight is vital to a well-functioning government, but the Majority's endless and frivolous document requests are wasting taxpayer money and diverting OSM and the Interior Department from their core responsibilities of serving the American people.

The Interior Department has produced around 14,000 pages of documents in response to the Majority's inquiries related to this rulemaking. The Majority has also received documents from the Office of Management and Budget, EPA, and the Army Corps of Engineers. And contractors that worked on the rulemaking have provided almost 7,000 pages of documents and roughly 25 hours of audio recordings of meetings with OSM officials.

In all of these materials, there is no evidence that OSM or the administration have done anything improper. In fact, the documents refute the Majority's allegations—as shown in a report from the Committee's Democratic staff last year—and the Majority was unable to find anything significant in all those hours of tape.

The few snippets of tape used by the Majority to attack the Stream Protection rulemaking have been flagrantly misrepresented, as discussed the last time Mr. Pizarchik was before this Committee.

Committee Republicans should end their wasteful and baseless investigation, and make their case on the merits: Why should we continue allowing mountaintop removal mining to bury hundreds of miles of Appalachian streams, destroy mountain towns, and threaten people in the region with cancer, lung and heart disease, and other health problems?

We in the Minority welcome that debate, but we should see what OSM proposes first. Today's hearing is a premature sideshow.

Mr. LAMBORN. We will now hear from our witness. I would like to welcome The Honorable Joe Pizarchik, Director of the Office of Surface Mining, Reclamation, and Enforcement of the Department of the Interior.

Like all of our witnesses, your written testimony will appear in full in the hearing record, so I will ask that you keep your oral statement to 5 minutes. Our microphones are not automatic, so you need to turn them on when you begin speaking.

I also want to explain how our timing lights work. When you begin to speak, our Clerk will start the timer, and a green light will appear. After 4 minutes a yellow light will appear. And then, after 5 minutes, the red light comes on and I would ask that you conclude at that time.

Director Pizarchik, thank you for being here, and you may begin.

**STATEMENT OF JOSEPH G. PIZARCHIK, DIRECTOR OF THE
OFFICE OF SURFACE MINING RECLAMATION AND
ENFORCEMENT, DEPARTMENT OF THE INTERIOR**

Mr. PIZARCHIK. I thank you, Chairman Lamborn and Ranking Member Huffman and members of the Committee, for the opportunity to testify on behalf of the Office of Surface Mining Reclamation and Enforcement regarding our operations, the status of the Stream Buffer Zone Rule and, equally as important, the Bureau's proposed rulemaking to better protect streams from the adverse effects of coal mining. As always, we look forward to working with you on matters relating to our mission under the Surface Mining Control and Reclamation Act.

Congress gave us its regulatory authority and our responsibilities 36 years ago when it passed SMCRA and mandated that we strike a balance between protecting the environment and helping provide for the Nation's energy needs. OSM was established to carry out two basic functions.

First, we are to ensure that mines operate in a manner that protects both people and the environment, and that the land is restored and is as productive after mining as it was before mining.

Second, we are to provide an abandoned mine land program to address hazards to people and the environment that were created during the mining for more than 200 years of largely unregulated mining.

As Interior Secretary Sally Jewell has stated, "Our commitment to the President's all-of-the-above energy strategy will enable us to continue with the safe and environmentally responsible expansion and diversification of our Nation's energy production, further reducing our reliance on foreign oil, and protecting our land and water at the same time." Protecting people, land, water, and the environment, and providing for responsible coal mining are not mutually exclusive. We can have both.

The all-of-the-above energy strategy is working. Activity in the Gulf of Mexico exceeds levels before the Deepwater Horizon spill. Onshore oil production from Federal lands is at its highest level in over a decade. Although OSM is not involved in coal leasing, the Administration is also making more coal available. In 2012, the Bureau of Land Management leased more coal than at any other time since 2003.

Along with responsible oil and gas development and the growth of clean, renewable energy, the production of coal is an important component of this Nation's energy portfolio, as evidenced by the President's support for clean coal technology. The responsible development of this resource is a key part of America's energy and economic security. Coal will remain an important part of our energy mix for years to come.

In December of 2008, OSM published a final rule that modified the circumstances under which mining can occur in or near streams. It is called the Stream Buffer Zone Rule, and has been challenged in court by 10 organizations. While the litigation has been pending, the Department has identified additional considerations that the 2008 rule did not address.

There have been significant advances in science and technology since the adoption of the 1983 rule that were not addressed in the 2008 rule. Incorporating the most up-to-date science, technology, and knowledge concerning the effects of coal mining is essential to developing modern regulations. In addition, the 2008 rule did not provide objective standards for certain important decisions. Therefore, OSM began work to modernize its regulations, incorporating new science, technology, and the best practices in areas that can improve, update, and more completely implement the law.

Many scientific advances have occurred in the past 30 years. In accordance with the law, OSM can and should consider those advances when modernizing its regulations. The 2008 rule did not incorporate the most modern technology and science that were available at that time, nor does the rule reflect the scientific advances that have occurred since that rule was adopted.

The revised rule that incorporates modern science, technology, knowledge, and best practices will enable the industry to do a better job and, in many cases, their work being done in a more economic and efficient manner. These goals are fully consistent with Congress's mandate, while also retaining much needed well-paying jobs and generating revenue in the Nation's energy fields.

As we develop the rule we are considering ways to improve the key provisions of the law in order to be able to minimize disturbances to fish, wildlife, and related environmental values, as is required by the law.

The development of the proposed rule is an iterative and interactive process. We develop each in concert with the other. The cost-benefit analysis and the potential rule changes help inform the decision of what should be in the proposed rule. OSM plans to publish the proposed rule in 2014. Consistent with the law, we will ask interested stakeholders and the public to read and comment on the proposed rule and draft EIS once those documents have been finalized and are available.

Thank you for the opportunity to be here today. I am available, should you have any questions.

[The prepared statement of Mr. Pizarchik follows:]

**Statement of Joseph G. Pizarchik, Director, Office of Surface Mining
Reclamation and Enforcement, U.S. Department of the Interior**

I. INTRODUCTION

Mister Chairman and Members of the Subcommittee, thank you for the opportunity to testify on behalf of the Office of Surface Mining Reclamation and Enforce-

ment (OSM) regarding our operations, the status of the Stream Buffer Zone Rule, and equally as important, the bureau's proposed rulemaking to better protect streams from the adverse effects of coal mining. As always, OSM looks forward to working with you on matters relating to its mission under the Surface Mining Control and Reclamation Act (SMCRA).

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

As Interior Secretary Sally Jewell has stated, our commitment to the President's "all of the above" energy strategy will enable us to continue with the safe and environmentally responsible expansion and diversification of our nation's energy production, further reducing our reliance on foreign oil, and protecting our land and water at the same time. Protecting people, land, water, and the environment and promoting responsible coal mining are not mutually exclusive. We can have both.

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

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

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

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

II. UPDATE ON STREAM BUFFER ZONE RULE

In December 2008, OSM published a final rule that modified the circumstances under which mining can occur in or near streams. The "Stream Buffer Zone Rule" (or "2008 SBZ Rule"⁵) has been challenged by ten organizations in two separate complaints filed in District Court for alleged legal deficiencies.

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

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

improve mining practices in order to minimize and mitigate environmental damage from surface coal mining.

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

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

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

Consistent with SMCRA, the National Environmental Policy Act, the Administrative Procedure Act, and other applicable laws, we will ask interested stakeholders—whether from Congress, industry, environmental organizations, or members of the public—to read and comment on the proposed rule and Draft EIS once those documents have been published. We have received extensive input from the public, states, and other Federal agencies on issues that we will consider in drafting the proposed rule, including more than 32,000 comments in 2009, and more than 20,000 after we held public scoping meetings in 2010. We look forward to additional public review and comment on the proposed rule and Draft EIS once they are published.

III. CONCLUSION

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

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

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

Mr. LAMBORN. All right. Thank you for your statement. Thank you for being available to answer questions. I will go ahead and jump in.

Mr. Director, in the audio recordings, the Committee found last year that there were clips of OSM staff directly explaining that it was "the Director's goal," that is your goal, to make coal mining companies "make a decision are they willing to risk their ability to ever mine coal again against the possibility that they won't be able to restore the stream."

As Director of OSM, is it still your goal to use forfeiture rules to drive coal companies out of business with the new regulation?

Mr. PIZARCHIK. What the law provides is that in order to assure mining, the applicant can only mine where they can restore the land where mining is feasible. The law requires them to post a bond to ensure that they meet their statutory requirements. That is under Section 509. And if they do not fulfill their requirements, the law also requires that their bonds be forfeited.

Now, the comments that you were talking about refer to the mere market conditions. What we are trying to do, what staff was trying to explain was that in the free market economics set forth in the statute, that the mine operator has the option and the duty to figure out whether it is technologically and economically feasible to mine that coal and to restore the land, as is required by the law.

Mr. LAMBORN. So, driving companies out of business is not the intention, or is the intention?

Mr. PIZARCHIK. No, it is not. In fact, what we are trying to do is modernize our regulations to help ensure that we have a strong, viable industry so they do not undertake mining that would result in excessive liabilities for perpetual treatment of their water. I have seen that happen in Pennsylvania years ago. And sometimes in the competitive world of business they make short-term business decisions that—

Mr. LAMBORN. OK.

Mr. PIZARCHIK [continuing]. End up costing them their livelihood and the jobs that they actually provide.

Mr. LAMBORN. Now, Mr. Director, OSM continues to contract with many of the same contractors that began working on this rule 4 years ago, and some are different. Can you tell the Committee whether the contractors responsible for drafting the EIS and the RIA have been instructed, for the purpose of this rulemaking, to pretend that the 2008 rule is in effect and being implemented across the country, or whether they were instructed to use on-the-ground factual information for their research?

Mr. PIZARCHIK. Our job is to uphold and implement the laws of the land. Under the laws of the land, as I understand it, that requires a baseline to take into consideration all the regulations that are on the books at the time when we are promulgating the new regulations. And according with that, the first contractor and the second contractor are looking at what are all the regulations.

The first contractor included that in Chapters 1 and 2 and the first parts of Chapter 4, then inexplicably disregarded the 2008 rule when doing some of the cost benefit analysis in the latter parts of Chapter 4.

Mr. LAMBORN. Now, let me just step back, Mr. Director, and look at the intention of the rule, or the impact of the rule. Is it the intention of the Office of Surface Mining for the Stream Buffer Zone Rule to affect the production of longwall mining?

Mr. PIZARCHIK. The Stream Buffer Zone Rule that is in effect I don't believe specifically addresses longwall mining. If you are talking about the rules that we are working to develop on the stream protection rule—is that which one you are asking—

Mr. LAMBORN. Yes, Mr. Director.

Mr. PIZARCHIK. OK.

Mr. LAMBORN. The proposed rule that you are working on.

Mr. PIZARCHIK. All right. The Surface Mining Act, the law, since its inception, has always required any type of coal mining to not cause material damage in areas adjacent to it. So the law has always required for underground mining, longwall mining, surface mining, not to cause material damage to streams adjacent to the permitted mining operation.

Mr. LAMBORN. So it is the intention of OSM to affect the production of longwall mining through the proposed rule.

Mr. PIZARCHIK. No. What our intent is is to better protect streams and to more completely implement the statute the way it was written in 1977 to protect streams from the adverse effects of coal mining. That would include longwall mining as well as surface mining.

Mr. LAMBORN. OK, thank you. I would now recognize the Ranking Member.

Mr. HUFFMAN. Thank you, Mr. Chairman, and welcome, Director Pizarchik. Director Pizarchik, the Surface Mining Control and Reclamation Act requires OSM to set standards based on best-available technology, and to minimize disturbances and adverse impacts of surface mining.

Now, since the Bush Administration issued its Stream Buffer Zone Rule in 2008, there has been a growing body of research, including several studies in 2011 and 2012, that show mountaintop removal mines not only ruin ecosystems, but can cause human health effects like cardio-vascular disease, cancer, birth defects, and poor overall health.

Doesn't OSM have a legal responsibility to adjust its rules according to the evolving science about the dangers of mountaintop removal mining? And are you considering this new research as you develop the proposed rule?

Mr. PIZARCHIK. Yes, we do have that duty. The statute imposes the obligation to use the most correct technology and the best methods to minimize it. And part of our efforts on developing the stream protection rule is to look at all of the existing science, available science, emerging science, and appropriately consider that in our rulemaking process.

Mr. HUFFMAN. Thank you. Director Pizarchik, the Majority has made a lot of accusations about the consequences of a new stream protection rule. But I want to ask you about the ripeness of these accusations and whether they are premature.

As required by both statute and Executive order, you are going to have to engage in a robust economic analysis, including an assessment of costs and benefits, as part of your rulemaking, once a proposed rule is actually issued. That proposed rule will then be subject to extensive public comment, which will inform the final rule that, again, will have to contain a cost benefit analysis.

So, in light of all that, my question to you is whether the conversation we are having today is premature, when a rule hasn't even been issued.

Mr. PIZARCHIK. Yes, sir, it is, because we are still in the process of developing that rule. We do not yet know what will be in that proposed rule.

Mr. HUFFMAN. And isn't it true that the analysis you are doing is precisely to ensure that the benefits of a new stream protection rule will outweigh the costs?

Mr. PIZARCHIK. Yes, sir. That is what the law requires us to do.

Mr. HUFFMAN. And just to be clear, coal companies, even Members of Congress and other outside parties, will have an opportunity to weigh in on your proposed rule and the accompanying economic analysis, once that work is complete. Is that correct?

Mr. PIZARCHIK. Absolutely, sir.

Mr. HUFFMAN. Director Pizarchik, I want to ask you about Patriot Coal. This is the second-largest producer of surface-mined coal in West Virginia. And they agreed late last year to abandon mountaintop removal mining. According to their CEO, "We recognize that our mining operations impact the communities in which we operate in significant ways." And abandoning mountaintop removal "will result in a reduction of our environmental footprint." So even coal companies are acknowledging what the Majority today fails to understand, that mountaintop removal mining is dangerous. We risk great harm to children and families in surrounding communities without meaningful protections.

Mr. Director, what risks to the environment and community has caused your Agency to initiate the stream protection rulemaking, and why are stronger protections needed?

Mr. PIZARCHIK. There are a number of risks with that. In regards to the mountaintop removal mining, science is showing that we have selenium poisoning the streams and the aquatic communities from some of the mines. There are high levels of total-dissolved solids that are adversely affecting the aquatic communities, and sometimes have resulted in fishkills. There are dust issues and concerns that come off that, but are beyond our authority.

What we are trying to do is use the most modern science to adequately protect the public with the best technology available.

Mr. HUFFMAN. Thank you for your testimony. I will yield the balance of my time.

Mr. LAMBORN. OK, thank you. And I would like to recognize Mr. Gosar.

Dr. GOSAR. Mr. Director, do you believe in the rule of law?

Mr. PIZARCHIK. Yes, sir.

Dr. GOSAR. And how about your science? How do you look at your science, the facts of science? Are they peer-reviewed science? By the way, I am a science guy, so I am really curious about how we look at science from—

Mr. PIZARCHIK. From our standpoint, as far as the rulemaking, we are considering all the science. Peer-reviewed science obviously has more value to it, and is part of our—

Dr. GOSAR. Has more value. So let me stop you right there. So it has more value, but other, unsubstantiated science you can use. I mean, because that is what you just said.

Mr. PIZARCHIK. My understanding is the—

Dr. GOSAR. No, no, no. Your understanding. I want to know how you apply it. I mean you are the Director; you should know how you apply it.

Mr. PIZARCHIK. That is what I am about to answer, sir.

It is my understanding that the staff is considering all the science that is available. They are the ones who will be making the decisions and looking at what the science is and what should be considered. Whatever science we have available and what has been considered will be documented in the documents that we produce, the draft EIS. So the public, scientists like yourself, everyone, will have the opportunity to review and comment on that. And if we miss something or have other things, we will be able to provide their input—

Dr. GOSAR. I am glad you brought that up. Because, I am sitting here from Arizona, from the Navajo Generating Station, and the whole decision process isn't even made on science. It is just not even on science. And so I am also one of these guys about trust is a series of promises kept, about having that stewardship. I want my environment clean, too, but I also want it based on science, reputable science, and having a dialog.

And that is why I am kind of having a problem here, because I have seen past inferences, and then you provide this track record of not complying with some type of oversight with Congress. I mean, we get these things severely redacted. I mean it seems like this is an MO with this Administration, which brings me to another question.

Is there new technology in law?

Mr. PIZARCHIK. I am sorry, could you repeat that?

Dr. GOSAR. Yes. Is there new technology in law?

Mr. PIZARCHIK. New technology in law?

Dr. GOSAR. Yes. Best management practices in law.

Mr. PIZARCHIK. I am not sure I understand your question.

Dr. GOSAR. Well, it seems like what we have a problem with is that if we don't like what one judge says, we just call and shop for another judge. It seems to be a new vogue type of application about how we get our way when we shop judges. It seems to be the Department of Justice just loves doing this, not just here, because it is already showing a habit here, but in other places of this Administration, whether it be in civil law, whether it is criminal law. You pick and choose.

I mean, so do we have that intention here?

Mr. PIZARCHIK. I don't know what you are referring to. I am not familiar—

Dr. GOSAR. You haven't shopped judges?

Mr. PIZARCHIK. Not to my knowledge.

Dr. GOSAR. Really? You find your duty to Congress is to comply with oversight?

Mr. PIZARCHIK. Yes, the Congress has a legitimate role in oversight, and we have also a legitimate role in the executive process. The Constitution sets forth the legislative authority under Article 1-2. Congress reserves the executive authority under Article 2 to the President, and we try to work together to accommodate our mutual interests in order to have a viable program, and a process—

Dr. GOSAR. OK. So then you actually made a deal that we were going to come out with an out-of-court settlement where we had a proposed rule on February 28th of 2011. Why did we miss that deadline?

Mr. PIZARCHIK. In the agreement that we had, we thought it was in the best interest of government not to be litigating, but to be working toward modernizing our regulations. We committed to making our best efforts—

Dr. GOSAR. But, I mean, you told me that you agreed with the rule of law. So why are we coming with that, making some type of deadline, and then pursuing it beyond that point?

Mr. PIZARCHIK. In the agreement we made a commitment to do our best efforts. We made our best efforts. Despite our best efforts,

we were not able to complete a proposed rule in that timeframe. Perhaps, having come from the State government into the Federal Government, I was a little bit naive as to how long it takes to get a rule or anything done in Washington.

Dr. GOSAR. Are you in the process of reaching another closed-door settlement with the environmental groups?

Mr. PIZARCHIK. Not to my knowledge, sir.

Dr. GOSAR. Have you promised the litigants that you will have a date-specific time for the rulemaking process?

Mr. PIZARCHIK. Not to my knowledge, sir, I have not.

Dr. GOSAR. Do you have a list of scientific data that you can share with us that you are looking at in implementing this buffer rule?

Mr. PIZARCHIK. I personally do not. I know that the staff has been working in—

Dr. GOSAR. It would be nice to have the staff share, I mean, correspond with Congress as to what they are looking in the scientific method. I think a transparent type of atmosphere will definitely help us in that application.

Mr. PIZARCHIK. We will cooperate whatever way we can with the legitimate oversight interest of the Congress, but we also want to protect the executive prerogatives of our deliberative process in developing the rulemaking. When we have the draft EIS available and published, it will reference all of the science and data that we have considered. Everyone will have the opportunity to review that, offer any additional ones if we may have missed something, as well as provide their comments on our analysis.

Dr. GOSAR. I, once again, go back to trust is a series of promises kept. It is like the Navajo Generating Station. There is no trust. And nothing is warranted. So I yield back.

Mr. LAMBORN. OK, thank you. Mr. Cárdenas.

Mr. CÁRDENAS. Thank you very much. You do have some trust in me. I don't know what he means by no trust. But you have trust in me and my constituents, as well.

Director Pizarchik, the Majority has inquired about how much money has been spent on the Obama Administration's stream protection rulemaking. However, OSM would not have needed to undertake this rulemaking if the Bush rule promulgated in 2008 was sufficiently protective and legally sound.

The Bush rule failed to provide required justification and ignored key evidence of environmental harm, violating the Administrative Procedure Act, the Surface Mining Control and Reclamation Act, the National Environmental Policy Act, and other environmental laws. The Obama Administration saw these problems and consequently settled the lawsuit challenging the rule by agreeing to undertake a new rulemaking.

Can you talk about the problems with the 2008 rule and why OSM had no choice but to undertake this rulemaking?

Mr. PIZARCHIK. Yes, sir. One of the primary problems with it is under the law that we are charged with executing, carrying out, OSM did not consult with the United States Fish and Wildlife Service regarding the impacts of that 2008 rule, as required by the law. We have admitted that error. Thinking it is in the best interest of the government not to litigate something where we made a

mistake, but to admit our mistake, minimize the litigation costs, and move on, and that is what we are doing. As well, trying to modernize our regulations with the most modern science and best practices that are being applied in the industry.

Mr. CÁRDENAS. Now, if we were to go ahead and allow activity to happen on our lands in this country without sound policy and/or sound science. Could some of the effects that we would allow during a certain period of time, could some of those effects last maybe decades, even longer?

Mr. PIZARCHIK. Yes, sir. In fact, that is exactly what happened that led to the Surface Mining Act. We had about 100 years of virtually unregulated mining, and we are still in the process of, billions of dollars later, cleaning up the mess that was created. We have miles and miles of streams that were polluted, water supplies destroyed. There are just thousands, and hundreds of thousands of acres of problems and water pollution out there by unregulated mining.

Mr. CÁRDENAS. Now, when those kinds of things occur, could those kinds of negative effects affect entire communities and/or jobs and/or economic flow of particular communities when we see that kind of contamination to our water systems?

Mr. PIZARCHIK. Absolutely. Any time you talk to any person starting a business or expanding it, one of the most important things that they want to have is clean water. I have seen parts of Appalachia where there is no business, because all the water has been polluted by historic mining.

Mr. CÁRDENAS. Yes. And it is my understanding that the title of this hearing is, "War on Jobs: Examining the Operations of the Office of Surface Mining and the Status of the Stream Buffer Zone Rule." So, basically, what you just said falls right in line with the war on jobs. I guess there is a war on jobs when we don't protect the environment. And, specifically, when we don't protect potable water.

Mr. PIZARCHIK. Yes. And, not only that, if you have a company who doesn't follow the law and creates post-mining pollutional discharge from their mining, that could go on for centuries, if not longer.

And I know of many instances in the past where companies who did that are no longer working today. They have no employees working today because their liabilities far exceeded their ability to make money, and they are out of business. And those jobs are lost, the environment is destroyed, the communities are damaged. We don't need any more of that.

Mr. CÁRDENAS. OK. On to another example. The Twilight mountaintop removal mine in Boone County, West Virginia, has had a devastating impact on nearby residents. Many grew weary of breathing dust-laden air and communities were transformed into ghost towns.

One former resident explained to the New York Times, "You could wash your car today and tomorrow you could write your name on it in the dust. It was just unpleasant to live in that town, period."

Another resident was quoted as saying, "This powder from the mountaintops was settling on everything, turning to brown paste

in the rain. People no longer hung their whites on the clothes lines.”

To hear the Majority tell it, these people should be grateful for their community’s mountaintop removal mine. But that is not exactly the reality to them. Director Pizarchik, has OSM heard these sorts of complaints as you conduct outreach in the Appalachian communities and develop your rulemaking?

Mr. PIZARCHIK. Yes, sir. I have.

Mr. CÁRDENAS. You have?

Mr. PIZARCHIK. Yes, and I have personally seen some of it. I have heard complaints about blasting issues and fumes from the blasting operations. I have been in Appalachia where mud is being tracked out on the roads, making the roads dangerous for the public to travel, et cetera.

Mr. CÁRDENAS. Thank you very much. I yield back my time. Thank you.

Mr. LAMBORN. I would like to now recognize Representative Wittman.

Dr. WITTMAN. Thank you, Mr. Chairman. Thank you, Director Pizarchik, for joining us today.

I want to start out. You noted that there would be a cost benefit analysis that would be done concerning the proposed regulation. Tell me a little bit about the cost benefit analysis. It is my understanding that the Agency does a cost benefit analysis. Is there any external review or peer review by economists of that to determine its validity?

Mr. PIZARCHIK. I will give you a little bit of an explanation as to what we were doing. Because of the cost benefit analysis, we don’t have that expertise on OSM staff. So we have contracted out for outside experts to do that work.

Dr. WITTMAN. OK.

Mr. PIZARCHIK. And within that contract we have also provided, on the cost benefit analysis, for there to be expert peer review of their particular work. So that is occurring.

And so, once the cost benefit analysis has been completed by the contractor, it will also have been peer-reviewed by other experts.

Dr. WITTMAN. Is the cost benefit analysis also subjected to public comment in the rulemaking process?

Mr. PIZARCHIK. As I understand the law, and the cost benefit analysis, that will be in Chapter 4 of the draft EIS. And, yes, that will be subject to public comment. We want to make sure that we have an analysis that is sufficiently explained in the document, so that anyone who reads it can understand how the numbers were derived, the methodology used, and can comment in an educated fashion on the results of those numbers.

Dr. WITTMAN. Can you give me an example, historically, where you have had a comment challenging a cost benefit analysis, and where you have incorporated public comments challenging the validity of a cost benefit analysis into changing the cost benefit analysis, and therefore, changing the final rule that the Agency makes?

Mr. PIZARCHIK. I cannot. This is the first rulemaking that has been conducted under my tenure that has progressed to this point. So I don’t have any examples of that in the past.

Dr. WITTMAN. Well, let me ask you in a broader sense, then. In the public comment period the idea is to get comments from the public. Can you tell me, on average, about how many comments you normally get through the rulemaking process on a proposed regulation?

Mr. PIZARCHIK. Sir, I don't know what that has been in the past. On this particular rulemaking, due to the interest in it, we are expecting in the tens of thousands of comments on it.

Dr. WITTMAN. All right. Can you tell me, too, in the past, when you pursued rulemaking and you have gotten comments, can you give me an example of where you have actually incorporated comments into changing the final rule before it goes for final promulgation?

Mr. PIZARCHIK. I don't have any personal knowledge of that in the past, because we haven't gotten that far here.

Dr. WITTMAN. So what you are saying is that you go through the public comment process, but the public comment really doesn't make its way into the final rule.

Mr. PIZARCHIK. Absolutely not. That is not at all what I am saying. What I am saying is I have not been with OSM long enough and conducted any rulemaking through the process where we have had the types—

Dr. WITTMAN. So you are just not aware that any public comment gets incorporated into the final rule.

Mr. PIZARCHIK. I have no experience in how it has been handled in the past, Congressman.

Dr. WITTMAN. OK. Let me ask this. The Committee has repeatedly asked for information on the current status of the ongoing litigation and communication with the various plaintiff groups. And last week, 5 months after the information was requested, some communications were finally received, including 5-year-old emails that were completely redacted, and therefore, void of any respective information. And I think we have a slide to pull up where it will show the Department didn't produce any documents or information indicating that the very next day you intended to file another court document supporting the position of the litigants, and requesting that the Federal court vacate the 2008 rule.

And as you can see, when we request information and the document comes back fully redacted, it kind of gets away from the intention of the Committee in trying to get information where we can pursue our role in oversight.

And my question is why is the Administration continuing to withhold information by redacting the very information that the Committee seeks? And if this is the case, then what is the information that the Agency or the Administration doesn't want Congress to see? I mean it would seem like to me, at least in a letter there, there would be something there. You know, there are conjunctions, there are the's and and's.

Why would you even want to redact the the's and the and's? To me, redacting the entire letter is just as illogical. So I just wanted to get your comment as to why this would be the way that you would respond to the Committee's request for information.

Mr. PIZARCHIK. Congressman, we respect the legitimate oversight interests of the Committee, and we also are working to protect the

legitimate interests of the executive deliberative process in the rulemaking. And——

Dr. WITTMAN. I mean it is hard for me to believe that you are protecting the interests by redacting every single word there. You are telling me that every single word, including the's, and's, I's, they's, even those, those are critical words that you can't even reveal in this?

Mr. PIZARCHIK. Sir, within the Department there are a lot of people who look at and work in responding to try to make sure we are as responsive as possible to the Committee. I don't profess to know all the decisions or been part of that. I——

Dr. WITTMAN. Well, Director Pizarchik, let me end with this. Let me ask you this. If you made a request of Congress for information, and you got back a document like this with everything redacted, would that satisfy you, with your request to Congress for information?

Mr. PIZARCHIK. Well, I don't think, as part of the executive branch, we have oversight of Congress. So——

Dr. WITTMAN. Well, I am not speaking about oversight. I am just speaking about just a common-sense request for information. If something like this were redacted, and the Committee here, staff said this is within the Committee's interest to do this, would you feel comfortable in receiving a document like that?

Mr. PIZARCHIK. Well, we have been willing to work with the Committee and we have offered to work with them, we have had reviews of documents, we will cooperate in every way we can within the bounds of the legitimate oversight interests and the executive, deliberative process in order to provide for a productive process.

Dr. WITTMAN. Mr. Chairman, thank you. Sorry. Sorry for the taking too much time. Thanks for your indulgence.

Mr. LAMBORN. OK, thank you. Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman and Ranking Member. Thank you, Director Pizarchik, for being with us.

I read some of the transcripts from your Senate confirmation hearing, and I know that Senator Murkowski asked you a question about whether you thought there should be an official and legitimate role for States in the process of developing recommendations or reaching decisions in the context of the inter-agency action plan. And sort of in summary, if you will indulge me, you basically said that you thought it was critical to the success of the inter-agency action plan for State and regulatory authorities to participate in developing any recommendations.

Having said that, is that a fair characterization, first of all, of your answer, that you think it is critical?

Mr. PIZARCHIK. Mr. Congressman, that seems like ages ago. I really have no recollection of that conversation.

Mr. CRAMER. But you still believe that to be true, that——

Mr. PIZARCHIK. I am not familiar with what the inter-agency action plan is——

Mr. CRAMER. OK.

Mr. PIZARCHIK [continuing]. But the States are a critical part of our process. They have provided input. And, for instance, when we share drafts of the EIS with them, we got hundreds of comments

from them and they have had input and they are a good source of information because, in many instances, they are the on-the-ground folks doing the mining—

Mr. CRAMER. Sure.

Mr. PIZARCHIK [continuing]. Or regulating the mining.

Mr. CRAMER. In fact, have primacy.

Mr. PIZARCHIK. Yes, sir.

Mr. CRAMER. Let me ask then. Have you had a lot of face-to-face meetings with some of the cooperative agencies in this process?

Mr. PIZARCHIK. In which process?

Mr. CRAMER. In the process of this rule that we are discussing today?

Mr. PIZARCHIK. In the beginning I had a number of meetings with States where we solicited input. We had a number of outreach sessions where we met with industry, the State regulators, the Tribes, on the scope of the thing. So I personally attended a number of those meetings. I think we had about 15 of those. We had nine scoping sessions we conducted and the States had an opportunity to provide input on that. We also had input with the States from the drafts of the first documents that were prepared by the previous contractor. So there has been a tremendous amount of input from the States.

Mr. CRAMER. I just want to be clear, though. So you said sharing drafts of the what, now, the first, the previous rule?

Mr. PIZARCHIK. Back in 2010, our previous contractor, we had—

Mr. CRAMER. Oh, I see.

Mr. PIZARCHIK [continuing]. Had prepared the first draft of various chapters of the Environmental Impact Statement. And those drafts were shared with the cooperating States who volunteered to be part of the cooperating agencies under the National Environmental Policy Act, and they provided a lot of comments to us during that process.

Mr. CRAMER. How about since that early phase in that 2010? Have there been many face-to-face meetings with the cooperative agencies, as well as, even conference calls, realizing that not everybody can get together?

Mr. PIZARCHIK. One of the things that the States made very clear to me, that they had very limited resources. And they didn't believe that reviewing or commenting on those comments was a productive use of their limited resources. I recognize the limited resources that they have in regards to the budget times, et cetera, and so I did not approach them to impose upon their limited resources at this time. When we have a document that we believe is satisfactorily along so that they can have a productive utilization of their limited resources, we will be sharing that with them.

Mr. CRAMER. Well, it is true that States have limited resources. Many of them, in fact, don't even spend more money than they take in, and that is a limiting factor that you are not confined to. I realize that, and it is something we ought to probably correct around here, but that is another committee and another hearing.

Let me ask you this, because I think on a previous question an opportunity was missed. Let's say, regarding the redacted response, what if a coal mine responded to you with a redacted document?

I mean that would be a little bit hard to accept, wouldn't it? I mean you have legitimate oversight of coal mines.

Mr. PIZARCHIK. I don't think those are equal situations that you can equate to. There are certain constitutional parameters that involve our relationship with Congress, and Congress's relationship with the executive branch that don't exist between OSM as oversight and the mine operator.

Mr. CRAMER. How about with regard to deadlines? When a regulated mine misses a deadline that you impose upon them, are there ever penalties that they are subject to, as a result?

Mr. PIZARCHIK. The typical process is a notice of violation and giving the mine operator an opportunity to correct their violation before penalties can be assessed. There can be instances where penalties are assessed, as appropriate, and in accordance with the statute and regulations.

Mr. CRAMER. Thank you. Mr. Chairman, as a former coal regulator in North Dakota, I am quite familiar with how onerous this process is, onerous to the point where even a wealthy State like North Dakota chooses not to participate, because we can't afford, quite frankly, to be part of a process like this. But my time is expired, and I appreciate the gentleman's indulgence.

Mr. LAMBORN. Thank you. Representative Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, and I appreciate the opportunity to participate in the hearing today.

Director Pizarchik, I heard my colleague on the other side a few minutes ago try to make the point that today's hearing and talking about this rule is premature. And you agreed with that. You have missed virtually every deadline that the law requires you to meet. You have spent millions of taxpayer dollars. You have failed to comply with virtually every request in full from this Committee to provide information. You have personal knowledge of what you say is the damage that coal mining is causing to streams, but yet you have no personal knowledge of the scientific data and analysis that is going into your rulemaking, or how public comments are being fed into your rulemaking process, even though you went through a public commenting session in the 2011, 2012 timeframe.

So, it is pretty clear to me that there is a lot about your Department that you don't know. And it is very frustrating to this Committee. Do you know what the term "oversight" means? Because I think you have a real misconception about the American system. This Committee is the voice of the American people. And under the Constitution of the United States it is our responsibility to oversee the chief executive for whom you work. That means when we ask questions, it is the voice of the American people asking the questions, and they demand answers.

For you to insinuate that you actually have more oversight and more legal authority to extract information from coal companies than we, the voice of the American people, have to get information from you and this Administration on what you are doing to a vital energy industry I think is despicable, Mr. Pizarchik, and you ought to be ashamed of yourself.

Let me ask you a couple of questions. You have been working on this rewrite of the Stream Buffer Zone Rule since 2009. Four years later, there is no final rule, no proposed rule, and the 1983 rule is,

in effect, creating great uncertainty for the industry. Can you confirm for us today that the NEPA-required Environmental Impact Statement and the OMB-required Regulatory Impact Analysis have not been completed?

Mr. PIZARCHIK. First, Mr. Congressman, welcome back to the Committee. And to answer to your question, yes, those documents have not been completed. They are still under the process of being developed.

Mr. JOHNSON. All right. So they have not been completed. Is that correct?

Mr. PIZARCHIK. Yes, they are still being developed.

Mr. JOHNSON. Well, in a letter sent to Chairman Hastings on April 2nd, you stated that OSM has spent approximately \$8.6 million on the rulemaking so far, with \$6 million going to contract support for the EIS and the RIA.

So, your Agency has spent 4 years and \$6 million on the EIS and the RIA alone, and you have no completed work product. Can you inform the Committee today what exactly are you paying for?

Mr. PIZARCHIK. We are paying for a NEPA-compliant, rule-compliant EIS, a draft EIS, as well as the Regulatory Impact Analysis and for peer review of those documents.

Mr. JOHNSON. Well, according to your office, no aspect of the rewrite of the Stream Buffer Zone Rule is complete, and you have been working on it for nearly 5 years. Are you in a position to provide this Committee any information about the current status of the rulemaking effort?

For example, how much has OSM spent on this project since you last updated the Committee?

Mr. PIZARCHIK. When I last updated the Committee—I haven't asked for any updates since—

Mr. JOHNSON. So you don't know. So you don't know. That is another "I don't know."

Let me go to my next question. Since you have already paid \$6 million to contractors to work on the EIS and RIA, can you tell us what the total value of the outstanding contracts are, and how much this will cost the taxpayers if it is allowed to continue?

Mr. PIZARCHIK. I don't have that number—

Mr. JOHNSON. You don't know.

Mr. PIZARCHIK [continuing]. Before me, but—

Mr. JOHNSON. You don't know. I am not surprised that you don't know. Let me ask you one other question.

Mr. PIZARCHIK. It is in the documents that we provided to you.

Mr. JOHNSON. Let me ask you one other question, Mr. Pizarchik. You said that part of your responsibility is to ensure that the benefits outweigh the costs when you are going through your rule-making process, correct?

Mr. PIZARCHIK. NEPA requires us to do a cost benefit analysis—

Mr. JOHNSON. All right—

Mr. PIZARCHIK [continuing]. That is correct.

Mr. JOHNSON [continuing]. Can you tell me how you plan to offset the cost of the thousands of jobs that are going to be lost, particularly along the Ohio River in coal country, where I represent, and the ancillary jobs that are also going to be lost and the families

that are going to be displaced? How is your rulemaking process going to address that cost, Mr. Pizarchik?

Mr. PIZARCHIK. I have been to those mines, sir. And based on my analysis and what I saw at the sites and the fact that we do not yet have a rule, we do not yet have the analysis completed, it is premature to assume that there will be jobs lost, as you have described—

Mr. JOHNSON. Oh, no.

Mr. PIZARCHIK [continuing]. Jobs created.

Mr. JOHNSON. We have been around this circle before. You had a contractor that verified that the proposed rule that you were putting in place was going to cost tens of thousands of jobs. Not going to have that debate with you again today. You can't dodge that bullet.

Mr. Chairman, I yield back.

Mr. LAMBORN. Representative Thompson.

Mr. THOMPSON. Thank you, Chairman. Director, good to see you. I wanted to, and I apologize if some of this area has been covered before, I was on the House Floor talking energy, which is important that we talk about all the time, obviously, affordable, reliable energy.

So, my first question is, what is your plan for seeking input from State cooperating agencies between now and the time the stream protection rule EIS is published for public comment in 2014?

Mr. PIZARCHIK. Nice seeing you again, Congressman Thompson. At this point we haven't made a decisions on it as far as what we would do. As I indicated while you were out, we are still in the process of developing the documents. And the input that I had received previously from the States, they pointed out that they had very limited resources, and didn't want to be spending their resources reviewing early drafts, most recently they indicated they wanted us to share something with them when it has been complete.

And respecting their interests and their limited resources, I have not yet made a decision as to when we would be sharing something with them. But I don't want to give them something prematurely that wasn't ready for their analysis and that would not be a useful expenditure of their limited resources.

Mr. THOMPSON. OK, because, and I am sure you know your obligation under the Department of the Interior's own NEPA regulations require collaboration, and I quote, "to the fullest extent possible with all cooperating agencies concerning issues relating to their jurisdiction and special expertise," and that cooperating agencies should be "evaluating alternatives and estimating the effects of implementing each alternative."

So, I would just encourage you fulfilling that responsibility and I would say provide these drafts as you go along. If the States do not have the resources to be able to work on them, that will be the decision of the States. But that should not preclude, and I suspect there are some States out there that obviously, this is an extremely important issue, it is an incredibly important issue in Pennsylvania, as well as I am sure some other States that are represented here.

And so, to do a cookie-cutter response that we are not going to send it out because you have heard from some that they are not ready to use them, get those drafts out. I think that you have, by statute and by regulation, a responsibility to do that.

How many face-to-face meetings has OSM had with cooperating agencies this year to discuss their comments on the EIS?

Mr. PIZARCHIK. I don't believe we have had any this year.

Mr. THOMPSON. OK. How many conference calls have there been?

Mr. PIZARCHIK. I don't believe there have been any contacts with the cooperating agencies this year, conference calls, face-to-face meetings, correspondence, or anything regarding their comments on the previous drafts or on this work.

Mr. THOMPSON. The CEQ regulations require lead agencies such as OSM to meet with cooperating agencies at the latter's request, and also mandate participation of cooperating agencies in the NEPA process at the earliest possible time.

So, why does that not occur? I mean this is 2013. This is August, or July, not too far a reach from August. The reasons why that responsibility hasn't been fulfilled?

Mr. PIZARCHIK. No, we had input from them on that first draft. And with their limited resources, I will reiterate that we aren't going to impose upon them to review something that isn't really ready for their review in order to not draw down on their limited resources.

Mr. THOMPSON. So you are not going to mandate the review. But have you forwarded the drafts to the States so that if this is a priority, and I suspect it is a priority in many States, they have the drafts in hand? It should be their decision how thoroughly and what due diligence they provide on the reviews.

Have you provided, and will you provide each of the drafts to the States?

Mr. PIZARCHIK. Actually, it is my decision on when it would be productive for them to be getting the drafts, and I don't believe it would be a productive use of their time to have a draft prematurely.

Mr. THOMPSON. Well, I would respectfully disagree on that. I think that the impact on the States—the States should be fully engaged, collaborative partners. I think the regulations you operate under with your own NEPA analysis, the Department of the Interior requires you to do this.

And so, I guess I know the answer to my next question. My next question was, will you provide the cooperating agencies with drafts of each revised chapter of the EIS as they become available, and provide them with an adequate opportunity to comment on the chapters and make changes to the EIS, where appropriate?

Mr. PIZARCHIK. We will be giving them an adequate opportunity to review and comment on the draft EIS when it is at the appropriate time. Yes, sir.

Mr. THOMPSON. Well, I guess it all comes down to our definition of the word "appropriate," where we disagree. Strongly, I believe.

Mr. Chairman, I am out of time, but if we have a second round I will look forward to participating.

Mr. LAMBORN. Thank you. Representative Lummis.

Mrs. LUMMIS. Thank you, Director. Now, let me get this straight. Well, let me start with this preface. Did the States create the Federal Government, or did the Federal Government create the States?

Mr. PIZARCHIK. We all know that the States ceded their powers to the Federal Government.

Mrs. LUMMIS. They ceded their powers? Did you say ceded their powers?

Mr. PIZARCHIK. Some of their powers, yes. They——

Mrs. LUMMIS. Holy buckets. OK. Now I understand. This makes perfect sense now. This makes perfect sense about why we are not getting anywhere. The States ceded their powers to the Federal Government. Wow.

Listen. OK. Your views now make it very apparent about why you believe that you are in a position to determine when it is appropriate to give States information.

But let me ask you this. The State of Wyoming and other States sent you a letter on July 1st asking for clarification on when, on certain points—have you responded to that letter?

Mr. PIZARCHIK. Not yet. I have not.

Mrs. LUMMIS. And why is that?

Mr. PIZARCHIK. Because I am——

Mrs. LUMMIS. The States ask questions of you. And you are going to decide when it is appropriate to respond? Is that the case?

Mr. PIZARCHIK. No.

Mrs. LUMMIS. When are you going to respond?

Mr. PIZARCHIK. After I give it careful, deliberative thought, and get the appropriate analysis in order to be able to provide an appropriate response.

Mrs. LUMMIS. And how long will that take?

Mr. PIZARCHIK. I have learned in Federal Government service I can't predict how long it takes government to do anything. So I don't know, ma'am.

Mrs. LUMMIS. Who do you work for? Who do you believe you work for?

Mr. PIZARCHIK. The American people.

Mrs. LUMMIS. And the American people sent you a letter and asked, "When are we going to receive our cooperating responses?" Are they cooperating agencies or not?

Mr. PIZARCHIK. There are several of them that have volunteered to be cooperating agencies on the rulemaking process, yes.

Mrs. LUMMIS. OK. So when are they going to find out?

Mr. PIZARCHIK. Once I have had the opportunity to give it the careful thought and get a response back to them.

Mrs. LUMMIS. Now, let me get this straight. The last stream protection rule was finalized in January of 2009, after 5 years of work, with EPA's concurrence and the input from States and stakeholders. Is that true?

Mr. PIZARCHIK. That is my understanding, yes.

Mrs. LUMMIS. OK. And then there is a lawsuit. And the Federal Government settles out of court with some environmental groups an ESA lawsuit. Correct?

Mr. PIZARCHIK. [No response.]

Mrs. LUMMIS. And then they agree to issue a new rule, even though all of the stakeholders and the States had already been involved for 5 years in negotiating the previous rule. Am I correct?

Mr. PIZARCHIK. Yes.

Mrs. LUMMIS. OK. Then, so the Federal Government settles out of court with groups that didn't like this 5-year process that involved all the stakeholders. You guys decide to settle out of court and issue a new rule. And now you are cutting the real stakeholders out of the process by deciding when it is appropriate to talk to them? Is that what is happening?

Mr. PIZARCHIK. No, that is not correct.

Mrs. LUMMIS. OK. What is happening?

Mr. PIZARCHIK. What has happened is that OSM had made a mistake in not fully complying with the law in the 2008 rule. Rather than litigate and waste court resources, government resources, the plaintiff's resources litigating something that we know was wrong, we have confessed our error, and we have asked the court to take action in accordance with our motion to have the case partially granted, as far as the error that we made, and allow us to go back and correct our error.

And on the second part of it, we have asked the court to dismiss the various other counts, because a number of them are out of date, as well as some of it would be moved.

Mrs. LUMMIS. I am going to switch subjects. The abandoned mine lands monies that have been contributed by Wyoming amounts to how much money this year?

Mr. PIZARCHIK. I don't have that number, but—

Mrs. LUMMIS. Well, I do.

Mr. PIZARCHIK. It is a very large amount.

Mrs. LUMMIS. It is, indeed: \$131 million. But who is counting?

Then, how much money can Wyoming expect to receive back from AML money this year?

Mr. PIZARCHIK. From this year, from the AML money, the law that Congress passed caps it at—

Mrs. LUMMIS. That is right. That is 11 percent—

Mr. PIZARCHIK [continuing]. The sequester.

Mrs. LUMMIS. And can you explain why Wyoming is getting 11 percent, when every other State is getting 50 percent?

Mr. PIZARCHIK. Because that is the law of the land, and we are enforcing that law.

Mrs. LUMMIS. Is there any other State, other than Wyoming, that was affected by that decision of Congress?

Mr. PIZARCHIK. Which decision—

Mrs. LUMMIS. The one that capped everybody at \$15 million?

Mr. PIZARCHIK. No, ma'am. I—

Mrs. LUMMIS. No, that is correct. That is absolutely correct. So Congress took one State and punished one State, the one State that collects more money for AML than all the other States combined, and punished one State. I am not blaming you. That was Congress that did that. And that ought to be acknowledged.

Mr. Chairman, I yield back.

Mr. LAMBORN. OK, thank you. I would now like to recognize myself for a second round of questions here.

To follow up, Mr. Pizarchik, on something that I was asking you earlier, about using the 2008 vacated rule, or you asked to have it vacated, as a baseline. Just to clarify, you are using that as a baseline in the assumptions that you are building in to the models for formulating the next rule. Is that correct?

Mr. PIZARCHIK. It is my understanding that, under the law, that all of the existing regulations are to be part of the baseline, as far as when you engage in a new rulemaking process. That is my understanding of it, yes.

Mr. LAMBORN. OK. Does that include the 2008 rule that was issued at the end of the Bush Administration?

Mr. PIZARCHIK. That is my understanding.

Mr. LAMBORN. OK. So that is being used to build on for the assumptions that your contractors are—

Mr. PIZARCHIK. My understanding that the National Environmental Policy Act requires a lot of different things to be looked at on the baseline. And the contractors and the career staff have been working on developing the appropriate baseline. I do not know all of the components of that, but I believe the 2008 rule is part of that baseline.

Mr. LAMBORN. Although it never took effect nationally.

Mr. PIZARCHIK. Actually, it is in effect nationally. It has been applied on Federal lands and where OSM is the regulator. In the primacy States, where the States are the regulator, we have not required them to implement it.

Mr. LAMBORN. My notes here say that that is Tennessee only. Is that correct?

Mr. PIZARCHIK. No. We also are the regulator in the Indian country on Hopi, Crow, and Navajo, as well as in the State of Washington.

Mr. LAMBORN. So, Indian reservation lands and the State of Tennessee.

Mr. PIZARCHIK. Where coal is actively being mined. Yes, sir.

Mr. LAMBORN. So that is the only place where the 2008 rule is in effect?

Mr. PIZARCHIK. That is the only place it is being implemented. It is in effect nationwide, but the primacy States have not been—

Mr. LAMBORN. Well, the importance of this, though, is that if you assume that is the existing rule for purposes of rulemaking, that will have a smaller economic impact than if you use the status quo in existence before that.

Mr. PIZARCHIK. Well, again, there are many components that go into the baseline. I do not know all of them. I think that a—

Mr. LAMBORN. Well, I would just hate to see fudging, where you minimize the economic impact and use false assumptions in order to accomplish that.

Mr. PIZARCHIK. I am sure—

Mr. LAMBORN. When the draft EIS, which apparently has been repudiated now, came out, it showed a direct job loss of 7,000 jobs, and many more thousands of lost jobs indirectly, with economic harm in at least 22 States.

Is the rule that you are working on now, some kind of modified rule, is it going to have these kinds of devastating economic impacts?

Mr. PIZARCHIK. The rule is still under development, as is the economic analysis, the cost analysis and the benefit analysis. So I don't know what those numbers are. But I can tell you that, under the NEPA, it is an iterative process. And as we go through it, as we learn what potential impacts would be from a change, then that helps inform the decisionmaking, so we can decide what would be in the proposed rule, and we are not at that point yet.

Mr. LAMBORN. Well, to drill down on that, we have listened to the audio tapes, and we hear someone in your department saying that there is only going to be 15 miles of streams protected.

Now, in coal country, there are hundreds, if not thousands of miles of streams. And to have this kind of onerous economic impact to protect 15 stream miles, to me, is very disproportionate. Am I wrong on that?

Mr. PIZARCHIK. What you are hearing was our staff trying to understand the analysis that that contractor put forward in order to get a better understanding of what is causing those impacts. And so they were trying to get that understanding as the way the process is supposed to work.

What we have learned is that the contractors who came up with those numbers based it on estimates, and then those estimates were also in part based on a misunderstanding of the draft rule language that they were considering at that point in time, and then those estimates, which were based on professional judgment, as I understand, without any explanation as to what were the assumptions they made on coming up with that professional judgment, it was not impossible for us to understand how they came up with those numbers, what was causing it or not.

And, as part of the NEPA process, that is important for us, to understand what the potential benefits and costs would be of potential changes in order to be able to make informed decisions. And we weren't able to get that type of information in that exchange or from that contractor, due to the methodologies that they had used.

Mr. LAMBORN. Now, if I heard correctly, someone on the other side of the aisle said that there were hundreds or thousands of stream miles that this rule needed to protect, and would protect. Is that a correct assumption?

Mr. PIZARCHIK. There has been, I believe it has been documented, there are 2,000 miles of streams that already have been buried. That is not counting the ones that have been mined through and not restored. We don't know, right now, what the ultimate numbers will be, because we still are in the process of developing a rule. But we know, based on past history, that there are hundreds of miles of streams that have been adversely impacted from mining.

Mr. LAMBORN. And where are those streams? Can you show me a map?

Mr. PIZARCHIK. I don't have that here, but I believe a number of them were documented in some previous studies. But I could get that information. I believe that is available.

Mr. LAMBORN. Would you, please? I would like that for the record.

Mr. PIZARCHIK. I will do my best to get you that.

Mr. LAMBORN. OK. Ranking Member Huffman.

Mr. HUFFMAN. Thank you, Mr. Chair.

Director Pizarchik, there has been a lot of discussion about a single document with a large redacted area in it. And I am not a science guy, as one other Member characterized themselves, but I am a law guy. And I will tell you in my career as a litigator, I certainly saw all kinds of documents that looked just like that. It happens all the time. And so, I want to just take a moment to discuss what it means when a document is redacted that way.

Now, you were being asked about the subject of pending litigation, correct?

Mr. PIZARCHIK. Yes, sir. There were questions about that.

Mr. HUFFMAN. All right. And when there is pending litigation, there are often documents that contain attorney-client privilege material. Is that fair to say?

Mr. PIZARCHIK. Yes, sir.

Mr. HUFFMAN. And it is your duty to make sure that the attorney-client privilege is not waived or breached by disclosure. Correct?

Mr. PIZARCHIK. That is correct.

Mr. HUFFMAN. There may also be deliberative process privileges that likewise have to be protected from waiver or disclosure. Is that fair to say?

Mr. PIZARCHIK. Yes, sir.

Mr. HUFFMAN. And then, finally, personal privacy information also would be another concern when you produce documents?

Mr. PIZARCHIK. Yes, and I believe there are laws that also require that to be kept.

Mr. HUFFMAN. All right. So, for the one single document about which there has been so much excitement and hyperventilation this morning, is it fair to say that redaction was because there was privileged information and/or personal, private information that was being protected from waiver or breach?

Mr. PIZARCHIK. I believe that is what our lawyers would have done, yes, sir.

Mr. HUFFMAN. And I notice that while so much time has been spent on the single mystery document, which really isn't much of a mystery to anybody who has litigated, not a lot of time has been spent on the amount of documents you have produced to this Committee.

We mentioned at the outset that the Department has produced about 14,000 pages of documents. Many of the things that you have been asked about here today, sometimes interrupted, talked over—I believe you were starting to say, in response to some questions, that that information was actually in the documents that have been produced to this Committee. There have been 7,000 pages of documents and roughly 25 hours of audio recordings produced from contractors that have been working with you on this rulemaking. And the Majority, nevertheless, has failed to expose any wrongdoing in all of this material that you have produced to them.

Is there anything more you want to say about the documents and the data and the information that you have produced to this Committee, as opposed to just further talking about the one single mystery document?

Mr. PIZARCHIK. Well, I think they have been responsive to the Committee's oversight. There is a fair amount of information in the documents that is, I believe, relevant to the oversight information. And we are going to continue to provide what we can, in accordance with the legitimate interests of both branches of government.

Mr. HUFFMAN. I assume, when you produce this kind of voluminous information in response to a series of requests from a Committee like this, that it takes a lot of staff time, and it costs your agency a lot of money.

Mr. PIZARCHIK. It absolutely does. I believe just for our agency, I believe, we had over 2,000 hours in preparing document requests. That is just for OSM, it is not for the solicitors and everybody else to review them. And I believe at last week's hearing, Chairman Hastings had mentioned that there were 10 document requests that the Committee had filed from the Department this year. Those are a lot of documents, takes a lot of time, and we respond to them as quickly and as timely as we can, but it takes a lot of effort and a lot of cost to the government.

Mr. HUFFMAN. With what is remaining in my time, I want to ask you about the contractor, Polu Kai Services, that you parted ways with that had at one point prepared a preliminary job analysis. And I believe this was called the bullet you can't dodge. And you certainly can't dodge it if nobody gives you any time to speak to it.

So, whether you want to dodge it or speak to it, I want to at least allow you some time to explain what happened with that contractor, what happened with that jobs estimate. And I specifically want to ask, it is my understanding that you were in the process of getting criticisms about this contractor's work well before that job's estimate information was released, that the criticisms of this person's work came not only internally, but from other stakeholders who had seen this contractor's work, and that this was a matter of poor performance that forced you to part ways with that contractor. But I want to give you a moment to actually speak to it.

Mr. PIZARCHIK. That is correct. We had hired the contractor to prepare NEPA documents, and the type of documents that were prepared didn't meet that requirements. We got hundreds of comments from our cooperating agencies, some of them quite strongly worded, because of the quality of those documents. And they were reinforcing what we were seeing, that the contractor was not performing up to the contract standards or the legal requirements that were necessary to meet in order to have a legitimate, defensible rulemaking, going forth.

Mr. HUFFMAN. Thank you, Director. I yield back, Mr. Chair.

Mr. LAMBORN. Representative Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I want to point out, I have never been a litigator, but I have been a job creator, I have been a businessman. And I know what this rulemaking is doing to the jobs in my district.

Mr. Director, just a point of clarification to make sure that our entire Committee understands this. No audio recordings have been provided by your Department. Those are still being withheld. The only audio recordings we have gotten we have gotten from outside

sources. This Committee has asked repeatedly for copies of the audio recordings of the meetings. Again, to fulfill our responsibility under the Constitution for oversight. So, again, shame on you and the Department for not complying.

Mr. Pizarchik, DOI's own NEPA regulations require collaboration to the fullest extent possible with all cooperating agencies concerning issues relating to their jurisdiction, so that they can evaluate alternatives, estimate the effects of implementing alternatives, et cetera.

Specifically, CEQ regulations required lead agencies such as OSM to meet with cooperating agencies at the agencies' request. I got a specific citation here that requires that, 40 CFR 1500.6(a)3, and also mandates participation of cooperating agencies in the NEPA process at the earliest possible time. I find it interesting that your interpretation of those directives is that when you deem it is appropriate. I don't get it.

Economic feasibility. You say that you consider economic feasibility in the rulemaking process. Can you tell me how you think it is economically feasible for a longwall mining operation to comply with a Stream Buffer Zone Rule, that, if it looks anything like the one that we looked at in the last Congress, would require them to spend millions of dollars each and every time they have to move that long wall to avoid operations under a stream? Can you explain to me how you are evaluating economic feasibility in that regard?

Mr. PIZARCHIK. It would be premature for me to speculate—

Mr. JOHNSON. You don't know.

Mr. PIZARCHIK [continuing]. On this, because we don't have a rule yet, and—

Mr. JOHNSON. You don't know.

Mr. PIZARCHIK [continuing]. We don't know what is going to be in the—

Mr. JOHNSON. Now you have been working on this for 5 years, 5 years. You don't have scientific analysis, you can't say what the stakeholders comments have done, and whether they have been integrated into the rulemaking process, and it is premature. It is not premature, Mr. Pizarchik, and you need to stop dodging the voice of the American people and come clean with what this rulemaking process is all about. And you and I are going to continue to have these dialogs until you do. So I want to make that clear to you.

In testimony before this Committee last year, and in Federal court documents filed just last week, you stated repeatedly that OSM believes that a rewrite of the Stream Buffer Zone Rule is a top priority, and that OSM will continue to use best efforts. How do you define "best efforts," when you have continuously told this Committee that you don't have any employees working on this full-time, and you have no work product after 5 years? Is that your best effort? Is that what you mean by best effort?

Mr. PIZARCHIK. We have been working on this, and we are going to continue to work and develop it, and we are making progress. As I indicated earlier, we anticipate some time in 2014 that we will have the—

Mr. JOHNSON. I have heard the deadlines that you keep pushing out. I have heard that. I have little confidence that you are going to get to it at that point, either.

You stated earlier, when you were asked about whether or not stakeholder comments are included, and if they have ever changed a rulemaking, and you said this is the first major rulemaking that you guys have done since you took over OSM. Correct? This is the only one. You are a director, and this is best efforts? You have only got one big one going on, and this is best efforts?

Mr. PIZARCHIK. We have a number of other rulemakings going on. What I indicated was this is the one that is the farthest along in this process. And best efforts, we are giving it our best shot. We have to take staff away from working on the rule to respond to document requests. That is a priority, as well. And—

Mr. JOHNSON. Do you take staff away from the rule to converse with stakeholders?

Mr. PIZARCHIK. I believe when you were in the room we got the answer to that question earlier on, that we had our interaction with the stakeholders earlier on, on the first drafts. We are still working on addressing comments and developing the rule and the draft EIS in accordance with those comments.

Mr. JOHNSON. Five years. Five years and millions of dollars of taxpayer funding, Mr. Pizarchik, is not acceptable to me. It wouldn't be acceptable in any business that I run.

Mr. Chairman, I yield back.

Mr. LAMBORN. Thank you. Mr. Thompson.

Mr. THOMPSON. Thank you, Chairman. Director, I want to come back to the contractors.

Now, your own employees have said the contractors were working at the direction of OSM, and that the problems attributed to the contractors were actually the responsibility of OSM. As I read and look, you are using a process that is destined to fail. And I have to wonder if that is on purpose, this is just one more tool on the part of the Obama Administration to really kill the coal industry.

The issue I see, regarding the contractors, it was the behavior and demands of your Department. One example is 10 days to review hundreds of pages. And that is just among many. You know, it is a process that rushes the contracting agencies in a reckless fashion.

Now, Mr. Director, I think the main question before us today is where do we go to from here, looking forward. I mean, what is the plan forward? As stated in the Chairman's opening statement, you, the OSM, you have wasted millions, nearly \$10 million over the past 4 years, with nothing to show. Now, today we hear that your hope, not a guarantee, but hope, is that there will be a new rule proposed a year from now.

Now, my question is, how much? How much will it cost us to continue the reckless, unnecessary, poorly managed process before you complete a rule? Another \$5 million, another \$10 million? Almost what we have invested already, taxpayers have, \$15 million? Is there an end to the black hole of waste at OSM?

So, my question is, where do we go from here, and what is it going to cost?

Mr. PIZARCHIK. Well, I believe it is about \$8 million to date, and I agree that is a lot of money to the average American. It is a lot of money to OSM. Perhaps if we were exempted from all of these

cost benefit analyses we could do the process a lot more efficiently. But I would be willing—

Mr. THOMPSON. Well, Director, let me just say the cost benefit analysis is a safeguard for American citizens. Regulations come at a cost, and it is a cost benefit, the comparison, cost benefit does not happen near enough as regulations are proposed by the bureaucracy of government. And so, I think asking for relief from a safeguard, something that safeguards the American taxpayer, the American citizens, is not something I would advocate for.

Mr. PIZARCHIK. OK. Then I would agree with you that spending \$8 million is money well spent on figuring out what the costs and benefits would be of the rulemaking process.

Mr. THOMPSON. So do you have an estimate? We have another year? I mean you were hoping, no guarantee, hoping for another year, based on the past expenditure lines, say \$8 million so far. What do you think we are going to rack up in bills before this rule is actually—well, let me just say, first of all, how much do you think we are going to spend on this rule before you actually engage the cooperating agencies, because I still want to come back to that in my first line of questioning.

I am just appalled that you are not sending it out there, because you assume that the States don't have resources to do anything with it. You have a regulatory responsibility to release these drafts, these EIS drafts. You don't get final pick. The regulations are clear. The Department of the Interior is very clear of engaging cooperative agencies. So how much money, additional money, are we going to spend until we at least get a draft released to the States?

Mr. PIZARCHIK. Well, I can get you the total contract dollar amount. We have a contract in place. I don't have that number at my fingertips, as far as what we have for the contractors to perform. It is a type of contract that is based on them producing certain documents and certain products, and we are on track for having those products. The contract is capped out at a certain amount. I don't remember the number on that. We have been very cautious. And at our meetings, we limit our meetings, we are conducting our meetings by teleconference call, minimizing travel, doing whatever we can to minimize and control the cost on that, so we do not exceed our existing contract cost on that.

Mr. THOMPSON. Well, I appreciate you saying you are cautious about it, but I will say it has been costly. And up to this point it has been quite ineffective and potentially damaging to just a tremendous number of jobs.

I had an opportunity, I represent western Pennsylvania, it was a little further out in western Pennsylvania, having dinner in a county out there just a week or so ago, and had a individual from the coal industry and his wife walk up to me. Somehow they figured out who I was. That is not always a good thing. I was outside my congressional district. Well, this couple, this family, is just devastated with what is going on with the coal industry in Pennsylvania.

And what is devastating it is—the Congressional Research Service just did a report that shows we have the largest reserve of coal. We have 88 billion more short tons than Russia, who is number two, of coal remaining. We have the technology to be able to do it

right. And, unfortunately, this Administration is just killing the coal industry, just devastating that family.

So, Mr. Chairman, I am way over my time. Thank you.

Mr. LAMBORN. OK, thank you. And, Mr. Pizarchik, thank you for being here. Thank you for answering questions. Members of the Committee may have additional questions for the record, and I would ask that you respond to those in writing.

If there is no further business, without objection, the Committee is adjourned.

[Whereupon, at 11:33 a.m., the Subcommittee was adjourned.]

